

Materialele



ALTERNATIVE LA DETENTIE IN UE



317DT04 Bucuresti, 23-24 februarie 2017



Cofinatat prin Programul
Justitie al Uniunii Europene 2014-2020

A. Legislația UE & documentele politice

A.01	Report from the Commission to the European Parliament and the Council on the implementation by the Member States of the Framework Decisions 2008/909/JHA, 2008/947/JHA and 2009/829/JHA on the mutual recognition of judicial decisions on custodial sentences or measures involving deprivation of liberty, on probation decisions and alternative sanctions and on supervision measures as an alternative to provisional detention, Brussels, 5.2.2014 COM(2014) 57 final (Numai în limba engleză)	1
A.02	Carte Verde: Consolidarea încrederii reciproce în spațiul judiciar european - o Carte verde privind aplicarea legislației UE referitoare la detenție în cadrul justiției penale, COM(2011) 327 final, Bruxelles, 14.6.2011	12
A.03	Green Paper: Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention: Consultation, 2011 (Numai în limba engleză)	33
A.04	Decizia-Cadru 2009/829/JAI a Consiliului din 23 octombrie 2009 privind aplicarea, între statele membre ale Uniunii Europene, a principiului recunoașterii reciproce în materia deciziilor privind măsurile de supraveghere judiciară ca alternativă la arestarea preventive	52
A.05	Decizia-Cadru 2008/909/JAI a Consiliului din 27 noiembrie 2008 privind aplicarea principiului recunoașterii reciproce în cazul hotărârilor judecătorești în materie penală care impun pedepse sau măsuri privative de libertate în scopul executării lor în Uniunea Europeană	73
A.06	Decizia-Cadru 2008/947/JAI a Consiliului din 27 noiembrie 2008 privind aplicarea principiului recunoașterii reciproce în cazul hotărârilor judecătorești și al deciziilor de probațiune în vederea supravegherii măsurilor de probațiune și a sancțiunilor alternative	93

A.07	Decizia-Cadru a Consiliului din 13 iunie 2002 privind mandatul european de arestare tare și procedurile de predare între statele membre (2002/584/JAI)	114
------	--	-----

B. Ministerului Justiției din Romania

B.01	The Romanian Probation System – from an experiment to a national system, 2015 (Numai în limba engleză)	Pe net
------	--	--------

C. Confederația de probă europene (CEP)

C.01	CEP Annual Plan 2016 (Numai în limba engleză)	Pe net
C.02	CEP Annual Report 2015 (Numai în limba engleză)	132
C.03	Electronic Monitoring in the Netherlands by the SVG, 2015 (Numai în limba engleză)	149
C.04	The CEP strategy for 2010 to 2013 (Numai în limba engleză)	Pe net
C.05	CEP Statement on probation values and principles, September 2010 (Numai în limba engleză)	151

D. Consiliului Europei

D.01	25th General Report, April 2016 (Numai în limba engleză)	Pe net
D.02	Extract from the 25th General Report: Situation of life-sentenced prisoners, April 2016 (Numai în limba engleză)	Pe net
D.03	CPT standards: “Substantive” sections of the CPT’s General Reports, 2015 (Numai în limba engleză)	Pe net
D.04	Living space per prisoner in prison establishments: CPT standards, Strasbourg, December 2015 (Numai în limba engleză)	Pe net
D.05	Standards and ethics in Electronic Monitoring: Handbook for professionals responsible for the establishment and the use of	Pe net

	Electronic Monitoring, Mike Nellis, June 2015 (Numai în limba engleză)	
D.06	Recommendation CM/Rec(2014)4 of the Committee of Ministers to member States on electronic monitoring, 19 February 2014 (Numai în limba engleză)	154
D.07	Survey of Electronic Monitoring (Em) In Europe: Analysis of Questionnaires, Mike Nellis, 2013 (Numai în limba engleză)	160
D.08	Recommendation CM/Rec(2010)1 of the Committee of Ministers to member states on the Council of Europe Probation Rules, 20 January 2010 (Numai în limba engleză)	175
D.09	Commentary to Recommendation CM/Rec (2010) 1 of the Committee of Ministers to member states on the Council of Europe probation rules, 20 January 2010 (Numai în limba engleză)	Pe net
D.10	Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, 11 January 2006 (Numai în limba engleză)	187
D.11	Commentary to Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules (Numai în limba engleză)	Pe net
D.12	Council of Europe Recommendation No. R(2000)22 on Improving the Implementation of the European Prison Rules on Community Sanctions and Measures (Numai în limba engleză)	202
D.13	Council of Europe Recommendation No. R(99)22 Concerning Prison Overcrowding and Prison Population Inflation, 30 September 1999 (Numai în limba engleză)	Pe net
D.14	Additional Protocol to the Convention on the Transfer of Sentenced Persons, Strasbourg, 18/12/1997 (Numai în limba engleză)	208
D.15	Council of Europe Recommendation No. R(92)16 of the Committee of Minister to Member States on the European Rules on Community Sanctions and Measures, 19 October 1992 (Numai în limba engleză)	212

D.16	Council of Europe Recommendation No. R(88)13 of the Committee of Ministers to Member States Concerning the Practical Application of the Convention on the Transfer of Sentenced Persons, 22 September 1988 (Numai în limba engleză)	224
D.17	Council of Europe Recommendation No. R(87)3 of the Committee of Ministers to Member States on the European Prison Rules, 12 February 1987 (Numai în limba engleză)	226
D.18	Recommendation No. R(84)11 of the Committee of Ministers to Member States Concerning Information About the Convention on the Transfer of Sentenced Persons, 21 June 1984 (Numai în limba engleză)	238
D.19	Convention on the Transfer of Sentenced Persons, Strasbourg, 21/03/1983 (Numai în limba engleză)	241
D.20	European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders, Strasbourg, 30/11/1964 (Numai în limba engleză)	250

E. EuroPris

E.01	Global Prison Trends 2016, 14 July 2016 (Numai în limba engleză)	Pe net
E.02	Report: Prison Work Models Critical Review, 13 June 2013 (Numai în limba engleză)	Pe net
E.03	Understanding the electronic monitoring of offenders in Europe: expansion, regulation and prospects, Mike Nellis, 15 March 2016 (Numai în limba engleză)	259
E.04	Prisons of the Future Reports (Numai în limba engleză)	Pe net
E.05	The International Office of the Dutch Probation Service: practice and legitimisation of its work with Dutch citizens in foreign prisons, 2015 (Numai în limba engleză)	283
E.06	Meeting Report November 2013 EU Framework Decisions 909, 947, 829, 2014 (Numai în limba engleză)	Pe net

F. Forum european a justiția reparatorie (EFRJ)

F.01	Victims and Restorative Justice: An empirical study of the needs, experiences and position of victims within restorative justice practices: Country reports, 2015 (Numai în limba engleză)	Pe net
F.02	Desistance and restorative justice: Mechanisms for desisting from crime within restorative justice practices, 2015 (Numai în limba engleză)	Pe net
F.03	Guidance for developing restorative justice processes supporting desistance: Promising practices, 2015 (Numai în limba engleză)	290
F.04	Doing restorative justice in cases of sexual violence: A practice guide, 2015 (Numai în limba engleză)	Pe net
F.05	Accessibility and Initiation of Restorative Justice, 2014 (Numai în limba engleză)	Pe net
F.06	Accessibility and Initiation of Restorative Justice: A Practical Guide, 2014 (Numai în limba engleză)	Pe net
F.07	EFRJ Annual Report 2014 (Numai în limba engleză)	Pe net
F.08	Building social support for Restorative Justice: Media, civil society and citizens, 2010 (Numai în limba engleză)	Pe net
F.09	Restorative Justice and Crime Prevention: Presenting a theoretical exploration, an empirical analysis and the policy perspective, 2010 (Numai în limba engleză)	Pe net

G. Institutul pentru Cercetare Internațională privind Politica Penală (IRCP)

G.01	Handbook on the Framework Decision 2008/909/JHA on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (key features), Gert	317
------	--	-----

	Vermeulen, Michaël Meysman, 10 May 2016 (Numai în limba engleză)	
G.02	Report: Cross-border execution of judgments involving deprivation of liberty in the EU, IRCP-series, Volume 40, Gert Vermeulen, Anton van Kalmthout, Neil Paterson,, Marije Knapen, Peter Verbeke, Wendy De Bondt, 2011 (Numai în limba engleză)	Pe net
G.03	Report: Material detention conditions, execution of custodial sentences and prisoner transfer in the EU Member States, IRCP-series, Volume 41, Gert Vermeulen, Anton van Kalmthout, Neil Paterson, Marije Knapen, Peter Verbeke, Wendy De Bondt, 2011 (Numai în limba engleză)	Pe net

H. STEPS 2 program reinstalarea: aplicare decizie-cadru 909

H.01	Project Summary, February 2016 (Numai în limba engleză)	328
H.02	Obstacles and Solutions in the implementation of the Framework Decision 2008/909/JHA, February 2016 (Numai în limba engleză)	Pe net
H.03	Developing a training package STEPS2 Resettlement: Support for Transfer of European Prison Sentences towards Resettlement, February 2016 (Numai în limba engleză)	Pe net
H.04	Annex 1: Steps 2 resettlement training survey, February 2016 (Numai în limba engleză)	Pe net
H.05	Developing an Offender Handbook, February 2016 (Numai în limba engleză)	Pe net
H.06	Offender Handbook: Prison transfers within Europe – Information booklet for prisoners, February 2016 (Numai în limba engleză)	331
H.07	Guidelines on consideration of victims and how they are affected throughout transfer processes of offenders under FD 909, Mihaela Tomita, February 2016 (Numai în limba engleză)	343
H.08	Social Rehabilitation Through the Prison Gate, February 2016 (Numai în limba engleză)	Pe net
H.09	The future of exchanging identification, security and social rehabilitation relevant information in the context of EU transfer	Pe net

	of sentenced persons, Wendy De Bondt and Ligeia Quackelbeen, February 2016 (Numai în limba engleză)	
--	---	--

I. Agenția pentru Drepturi Fundamentale a Uniunii Europene (FRA)

I.01	Report: Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfers, November 2016 (Numai în limba engleză)	Pe net
I.02	Report: Rights of suspected and accused persons across the EU: translation, interpretation and information, November 2016 (Numai în limba engleză)	Pe net

J. Observator European al închisoare

J.01	Manifesto for a New Penal Culture, 2016 (Numai în limba engleză)	Pe net
J.02	Alternatives to imprisonment in Europe: A handbook of good practice, Catherine Heard, May 2016 (Numai în limba engleză)	351
J.03	Reducing the prison population in Europe: Do community based sentences work?, Omid Firouzi Tabar, Michele Miravalle, Daniela Ronco, Giovanni Torrente, May 2016 (Numai în limba engleză)	Pe net
J.04	Alternatives to Prison in Spain, Mónica Aranda Ocaña, October 2015 (Numai în limba engleză)	Pe net
J.05	Alternatives to Prison in Italy, Susanna Marietti, October 2015 (Numai în limba engleză)	Pe net
J.06	Alternatives to Prison in France, Marie Crétenot, October 2015 (Numai în limba engleză)	Pe net
J.07	Alternatives to Prison in Greece, Nikolaos K. Koulouris, William Aloskofis, Sophie Vidali, Dimitris Koros, Sophie Spyrea, October 2015 (Numai în limba engleză)	Pe net
J.08	Alternatives to Prison in Latvia, Anhelita Kamenska, Kristīne Laganovska, October 2015 (Numai în limba engleză)	Pe net

J.09	Alternatives to Prison in Portugal, António Pedro Does, Nuno Pontes, Ricardo Loureiro, October 2015 (Numai în limba engleză)	Pe net
J.10	Alternatives to Prison in the United Kingdom, Catherine Heard, Matt Ford, October 2015 (Numai în limba engleză)	Pe net
J.11	National monitoring bodies of prison conditions and the European standards, Mónica Aranda, January 2015 (Numai în limba engleză)	Pe net
J.12	Prison Conditions in Spain, 4 July 2014 (Numai în limba engleză)	Pe net
J.13	From national practices to European Guidelines: interesting initiatives in prison management, Marie Crétenot, December 2013 (Numai în limba engleză)	Pe net
J.14	Prison in Europe: Overview and trends, Alessandro Maculan, Daniela Ronco, Francesca Vianello, September 2013 (Numai în limba engleză)	Pe net
J.15	Prison Conditions in Italy, Susanna Marietti, September 2013 (Numai în limba engleză)	Pe net
J.16	Prison Conditions in France, Marie Crétenot, Barbara Liaras, September 2013 (Numai în limba engleză)	Pe net
J.17	Prison Conditions in Greece, Nikolaos K. Koulouris, William Aloskofis, September 2013 (Numai în limba engleză)	Pe net
J.18	Prison Conditions in Latvia, Anhelita Kamenska, Ilvija Pūce, Kristīne Laganovska September 2013 (Numai în limba engleză)	Pe net
J.19	Prison Conditions in Poland, Piotr Kładoczny, Marcin Wolny, September 2013 (Numai în limba engleză)	Pe net
J.20	Prison Conditions in Portugal, António Pedro Does, Nuno Pontes, Ricardo Loureiro, September 2013 (Numai în limba engleză)	Pe net
J.21	Prison Conditions in the United Kingdom, Arianna Silvestri, September 2013 (Numai în limba engleză)	Pe net

K. Contravenient supravegherea Superviziona în Europa proiect

K.01	Final Report, 2016 (Numai în limba engleză)	387
------	---	-----

L. Site-uri utile

L.01	Comisia Europeană: Direcția Generală Justiție și Consumatori (Numai în limba engleză)	Pe net
L.02	Sanțiuni și măsuri penitenciare și comunitare: Consiliul Europei (Numai în limba engleză)	Pe net
L.03	Confederația de probă europene (CEP) (Numai în limba engleză)	Pe net
L.04	Supravegherea contravenient în Europa (Numai în limba engleză)	Pe net
L.05	Forum european a justiția reparatorie (EFRJ) (Numai în limba engleză)	Pe net
L.06	EuroPris (Numai în limba engleză)	Pe net
L.07	STEPS 2 program reinstalarea: aplicare decizie-cadru 909 (Numai în limba engleză)	Pe net
L.08	Observator European al închisoare (Numai în limba engleză)	Pe net
L.09	Agenția pentru Drepturi Fundamentale a Uniunii Europene (FRA) (Numai în limba engleză)	Pe net



Alternatives to detention:

**The big picture and the various means
that constitute actual alternatives**

Professor Anton van Kalmthout
Bucharest February 2017

Short history of the search for alternatives -1-

* First attempt took place at the end of the 19th and beginning of the 20th century by the Modern Movement (Internationale Kriminalistische Vereinigung), headed by Von Liszt, Hamel and Prins,

*Reasons: 1) One dimensional sanction systems with only 2 penalties: imprisonment and fine,
2) Overcrowded prisons, many fine defaulters,
3) High recidivism rates,
4) Little trust in rehabilitative effects of imprisonment, especially regarding short term prison sentences,
5) Increasing interest in the person of the offender, influenced by new social sciences (psychology, psychiatry and sociology).

Short history of the search for alternatives -2-

This international movement resulted in the following changes in the sanction-systems:

- * Introduction of the double track sanction system (penalties and measures),
- * Special sanctions for juveniles and mentally-ill offenders,
- * Introduction of new sanctions or sanction modalities:
 - 1) Suspended, conditional sentence and conditional release,
 - 2) Day-fine system, based on financial capacity,
 - 3) Community Service, especially for fine defaulters,
 - 4) House arrest,
 - 5) Withdrawal or restriction of certain rights.

Short history of the search for alternatives -3-

In 1970s-1980s of 20th Century a new international movement searching for alternatives came up:

Reasons:

- *Many of the ideas of the former Modern Movement remained a dead letter, because the lack of an adequate infrastructure,
- *Economic crisis in many European Countries,
- *Increasing crime rates,
- *Detention circumstances and Prison overcrowding,
- *High proportion of pre-trial detention,
- *Decreasing trust in the effectiveness and efficiency of criminal justice systems,
- *Increasing interest in Human Rights issues (ECHR)

Short history of the search for alternatives -4-

The development of alternatives to deprivation of liberty has got a strong impetus by the role of international organisations, such as:

- 1) United Nations
- 2) Council of Europe
- 3) More recent: The European Union

and NGO's, such as

- 4) CEP (Conférence Internationale de Probation)
- 5) Penal Reform International



Important international documents on alternatives to imprisonment

1. United Nations :

Standard Minimum Rules for non-custodial Measures (Tokyo Rules) (1990),

2. Council of Europe:

- a) Recommendation No. R. (92) on Community Sanctions and Measures, to be revised in 2016 by CM/Rec (2016),
- b) Recommendation CM/Rec (2010) on the Council of Europe Probation Rules,

3) European Union:

- a) Framework Decision 2008/947/JHA on Probation Measures and Alternative Sanctions,
- b) Framework Decision 2009/829/JHA on Supervision Measures as an alternative to provisional detention.

Alternative Sanctions: Terminology and Scope

The main question is:

What do we understand by the term “Alternative Sanctions”?

Alternative Sanctions: Terminology and Scope

1. UN. Tokyo Rules use the term ‘Non-Custodial measures`:

“They include a wide range of non-custodial measures, from pre-trial to post sentencing dispositions” (Art.2.).

a) Pre-trial stage: 1) discharge, 2) noncustodial measures imposed by the prosecutor, 3) alternatives to pre-trial detention,

b) Trial stage: 1) Verbal sanctions, 2) Conditional discharge, 3) Economic and Monetary penalties, 3) Suspended or Deferred sentence, 4) Confiscation, 5) Compensation to the victim, 6) Probation as sanction in its own right, 7) Community Service, 8) Referral to an attendance Centre, 9) House Arrest, 10) Any other mode of non-institutional treatment, 11) Combination of these non-custodial measures.

Alternative Sanctions: Terminology and Scope

c) Post-Sentencing stage: 1) Furlough and half-way houses, 2) work or educational release, 3) various forms of parole/conditional release, 4) pardon.

Alternative Sanctions: Terminology and Scope

2) Council of Europe uses the term 'Community Sanctions and Measures', i.e:

“Sanctions and measures which maintain offenders in the community and involve some restrictions on their liberty through the imposition of conditions/and or obligations. The term designates any sanction imposed by a judicial or administrative authority, and any measure taken before or instead of a decision on a sanction, as well as ways of enforcing a sentence of imprisonment outside a prison establishment”.(Glossary under 1)

Alternative Sanctions: Terminology and Scope

3) European Union:

a) FD 947 uses the term: “Probation Measures and alternative sanctions”.

-Alternative sanction is defined as : a sanction, other than a custodial sentence, involving deprivation of liberty, or a financial penalty, imposing an obligation or instruction” (art.2.4),

-Probation measure is defined as: “obligations and instructions imposed by a competent authority, in connection with a suspended sentence, a conditional sentence or a conditional release”

NB: FD 947 deals only with alternative sanctions and measures that are based on a judgment, i.e a final decision or order of a court.

Alternative Sanctions: Terminology and Scope

3) European Union:

b) FD 2009/829/JHA of 23 October 2009 on “Supervision measures as an alternative to provisional detention uses following definitions:

-Decision on supervision measures:

“an enforceable decision taken in the course of criminal proceedings by a competent authority imposing , as alternative to provisional detention, one or more supervision measures, (art. 4a),

-Supervision measures:

“Obligations and instructions imposed on a natural person” (art, 4, c)

Alternative Sanctions: Differences -1-

Main difference between the non-custodial Measures (UN), Community Sanctions and Measures (CoE), Alternative Sanctions and Probation Measures (EU) and Supervisory Measures (EU):

1) **non-custodial Measures (UN)** refer to all stages of criminal procedure (pre-trial, trial and post trial) and do not exclude any alternative,

2) **Community Sanctions and Measures (CoE)** do not include a) financial, b) monetary or c) verbal alternatives to custody, d) alternatives to pre-trial detention. Emphasis lies on sanctions or measures imposed by competent authorities with a strong involvement of the community.

Alternative Sanctions: Differences -2-

3)

a) **Alternative sanctions and probation measures (EU)** include only sanctions and measures (, attached to a suspended/conditional sentence or conditional release), that are based on a judgment of a court. This means that sanctions during the pre-trial phase are excluded. Excluded are also **custodial sentences or measures** (FD 909) and **financial penalties** (FD 214) and **confiscation orders**(FD 783).

b) **Alternatives to pre-trial detention**, as far as they can be qualified as supervision measure are dealt with in FD 829.

Types of Alternatives

In general alternatives to deprivation of liberty can be divided in:

- 1) Alternatives to pre-trial/provisional detention
- 2) Front-door Alternatives (pre-trial sanctions and measures, which can be imposed by competent authorities, other than courts),
- 3) Sentencing Alternatives (sanctions and measures, that can be imposed by courts or execution judges)
- 4) Back-end alternative sanctions and measures

1) Alternatives to pre-trial/provisional detention in the EU -1-

- 1) Restriction on movement (available in 27 MS),
Such as: Prohibition from leaving the national territory, prohibition from leaving the designated premises (house arrest), prohibition on entering certain locations),
- 2) Restrictions on communication with specific persons (available in 24 MS),
- 3) Duty to report/Mandatory registration (available in 18 MS),
- 4) Financial Surety, such as bail (available in 16 MS)
- 5) Medical rehabilitation schemes (available in 10 MS)
Such as: Psychiatric treatment, outpatient treatment programmes, treatment programmes for addiction to alcohol or narcotics
- 6) Social rehabilitation schemes (available in 4 MS)
Such as: Programms on youth rehabilitation, social integration, citizen training, road traffic training, violent behaviour treatment programmes.



Alternatives to pre-trial/provisional detention in the EU -2-

- 7) Electronic Monitoring (available in 10 MS),
 - 8) Strict measures, supervised by the probation service (available in 11 MS),
 - 9) Seizure of documents (available in 6 MS),
 - 10) Other restriction on liberties (available in 5 MS)
- Such as: Ban on driving, ban on writing cheques, ban on carrying alcoholic beverages.*

1) Front-door Alternatives -1-

- Front-door alternatives are also called : out of court settlements or diversionary measures. They include sanctions and measures that are imposed by a public prosecutor or investigating judge in order to avoid further prosecution of the case.
- Front-door alternatives can especially be found in countries where investigating judges or public prosecutors are invested with sentencing powers, such as in the Netherlands, Austria, Belgium, Czech Republic, Germany.
- In most cases the front-door alternatives are based on the expediency or opportunity principle of expediency
- In some countries also mediation with consent of the victim can avoid further prosecution by the public prosecutor (eg. Bulgaria, Romania).

Front-door Alternatives -2-

Main Front-door alternatives:

- Financial transactions/ penal orders by the public prosecutor,
- Mediation,
- Community Service,
- Conditional waiver of the prosecution, with obligations/instructions,
- Educational and therapeutic treatment programmes,
- Diversion of the case with probation.
- House arrest
- Electronic monitoring
- Compensation to the victim
- Controlled freedom

Front-door Alternatives -2-

The Netherlands as example

Cases known to the Public Prosecutor	205.400
Dealt with by the Public Prosecutor	95.400
Of which:	
Sanctioned with a penal order (fine)	26.300
Sanctioned with a penal order (CSO)	1400
Transaction with financial condition (fine or compensation)	6800
Transaction with Community Service	5000
Conditional waiver with obligations/instructions	9300
Unconditional waiver	41600
Sentenced by the Court	102.000
Unconditional prison sentence	15.000
Partly conditional/unconditional	7.200
Fully conditional with obligations/instructions	12.000
Community Service	30.000
Fine	33.000



Sentencing Alternatives -1-

Sentencing alternatives are those sanctions and measures that can be imposed by the sentencing judge or in a later stage by the special executing judge (eg. Belgium, Sweden, France, Italy).

To these sentencing alternatives belong:

- Warning,
- Fine and other financial sanctions,
- Confiscation,
- Suspended/conditional sentence
- Suspended/conditional sentence with supervision,
- Mediation,
- Probation,

Sentencing Alternatives -2-

- Withdrawal of rights,
- Compensation to the victim,
- Training/learning programmes,
- Community Service,
- House arrest,
- Electronic monitoring,
- Compulsory in-patient/out –patient treatment.
- Semi-liberty
- Combination (punishment) orders

Back-door alternatives -1--

To the back-end alternatives belong:

- Conditional release/parole/early release
- Pardon/amnesty
- Probationary Assignment to the social/probation service
- Semi-liberty/semi-detention/weekend detention
- Prison reduction by labour or study
- Penitentiary programmes, carried out outside the prison

NB: Most of these alternatives are not really alternatives but hybrid alternatives, because they are in fact execution modalities that replace/reduce only a part of the custodial sentence

Concluding remarks

The use of alternatives can be improved by:

- 1) Paying more attention has to be given to alternatives to pre-trial detention and front-door alternatives,
- 2) Making the ESO and FD 947 more flexible and less complicated,
- 3) Creating an alternatives-friendly infrastructure (Probation Service),
- 4) Creating more awareness of civil society, but also of judges, public prosecutors and lawyers,
- 5) Not excluding foreign nationals/(ir)regular immigrants from alternatives,
- 6) By more co-operation between probation service, other agencies (schools, work, housing, health and treatment) and local communities, especially with respect to special categories of offenders,
- 7) Investing in research and collecting factual data on alternatives.

The following 3 dia's, that are based on the latest SPACE 2 report show how important data collection and data analysis is. From many countries no information on alternatives to detention (Community Sanctions and Measures/ Probation/Supervision) is available and the figures mentioned in SPACE 2, provided by the national authorities are far from correct.

To quote FRA opinion 2 in the report : “Criminal detention and alternatives: fundamental rights aspects in EU cross-border transfers, page 34:

“Information on how the three instruments are being used needs to be gathered and data collection needs to be improved, standardised, and Consistently used for the feedback and improvements”....Central authorities in EU Member States should also work together to improve the consistency of such data and information collection across the EU”.

NUMBER OF PERSONS HAVING STARTED TO SERVE CSM OR Probation/Supervision **before the sentence** (Flow) in 2014

Country	Alternatives to pre-trial	Conditional suspension of criminal proceedings	Deferral of the pronouncement of a sentence	Mediation	Other
Austria	323	9179	-	-	-
Croatia	59	59	-	-	-
Cyprus	1088		-		1209
Czech Republic	629	90	-	933	10354
Estonia	33	-	-	-	-
France	2428	-	302	-	-
Greece	2209	2250	-	229	52
Netherlands	3895	1520	-	-	-
Luxemburg	8	-	-	-	9
Portugal	899	12444	-	-	0
Slovenia	468	57	-	152	85

NUMBER OF PERSONS HAVING STARTED TO SERVE CSM OR Probation Supervision **after the sentence** (Flow) in 2014

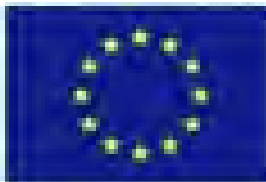
Country	Fully suspended custodial sentence	Partially suspended custodial sentence	Conditional pardon or conditional discharge	Community service	Electronic monitoring/home arrest/curfew order
Austria	1775	539	0	4584	764
Croatia	353	0	0	3480	0
Czech Republic	5697	-	31	8629	221
Denmark	1841	332	14	3649	2941
Estonia	2129	156	-	1857	3
Finland	-	-	-	1952	187
France	72294	-	-	30298	21822
Germany	88941	-	-	-	36
Greece	3311	849	11	2211	30
Italy	6776	-	-	10098	15379
Norway	530	-	-	2246	2801
Luxemburg	57	21	-	145	41

NUMBER OF PERSONS HAVING STARTED TO SERVE CSM OR Probation Supervision **after the sentence** (Flow) in 2014

Country	Semi-liberty	Treatment	Conditional release/parole with probation	Mixed orders	Other
Austria	-	139	1671	-	-
Croatia	0	0	1749	0	197
Czech Republic	-	131	1091	-	778
Denmark	-	413	2445	-	884
Estonia	-	1	424	-	67
Finland	-	-	755	223	-
France	4238	-	7949	-	8554
Germany	-	-	-	-	-
Greece	-	35	4021	3	21
Italy	692	3186	3360	2067	14181
Norway	-	-	794	-	-
Luxemburg	56	-	73	-	29
Portugal	-	100	1504	0	-

Reforma legislativă pentru a lărgi rolul variantelor alternative la detenție: Studiu de caz – România

Probațiunea – scurt istoric și atribuții



Cofinanțat prin Programul Justiție al Uniunii Europene 2014-2020

Legislația anterioară anului 1989 – sancțiuni alternative

- Liberarea condiționată (ca instituție exista încă din 1874)
- Codul penal 1968 – Suspendarea condiționată a executării pedepsei
- 1973 – se introduce posibilitatea executării pedepsei "la locul de muncă" (munca corecțională)
- Libertatea supravegheată în cazul minorilor

Legislația 1989 - 2014

- **Legea 104/1992 introduce în Codul penal suspendarea sub supraveghere a executării pedepsei închisorii (judecătorul desemnat sau alte organe stabilite de instanță) = pentru pedepse de cel mult 4 ani/3 ani în cazul concursului de infracțiuni; termenul de încercare se compunea din quantumul pedepsei închisorii aplicate, la care se adaugă un interval de timp, stabilit de instanță, între 2 și 5 ani.**
- Instanța poate să impună condamnatului respectarea uneia sau a mai multora din următoarele obligații:
 - a) să desfășoare o activitate sau să urmeze un curs de învățământ ori de calificare;
 - b) să nu schimbe domiciliul sau reședința avută ori să nu depășească limita teritorială stabilită, decât în condițiile fixate de instanță;
 - c) să nu frecventeze anumite locuri stabilite;
 - d) să nu intre în legătură cu anumite persoane;
 - e) să nu conducă nici un vehicul sau anumite vehicule;
 - f) să se supună măsurilor de control, tratament sau îngrijire, în special în scopul dezintoxicării.

Legislația 2014 - prezent

- **Amânarea aplicării pedepsei** (munca în folosul comunității la latitudinea instanței)
- **Suspendarea sub supraveghere a executării pedepsei** (munca în folosul comunității obligatorie)
- **Liberarea condiționată cu supraveghere**, în anumite situații
- **Patru măsuri educative neprivative de libertate** în cazul minorilor
- **Liberarea din centrul de detenție** în cazul minorilor

Probațiunea - începuturi

- 1997 Arad – primul centru experimental de probațiune, prin Ordin al Ministrului Justiției
- 1997 Găești, Focșani
- 1998 Gherla, Dej, Cluj, Iași
- 1999 Pitești, Târgoviște
- 2000 București
- Programe finanțate în special de Guvernul Marii Britanii sau cu sprijinul unor organizații neguvernamentale
- Au fost implicați procurori, judecători, angajați ai penitenciarelor

Centrele experimentale - Ordin al Ministrului Justiției

- Promovarea probațiunii în rândul magistraților, autorităților locale și a publicului larg
- Colaborarea cu instanțele (referate de evaluare)
- Colaborarea cu instituții publice și private din comunitate
- Lucrul în penitenciar (consiliere pe probleme de droguri și alcool, dezvoltare de abilități sociale)

Cadrul legislativ - începuturi

- **O.G. nr. 92/2000** privind organizarea și funcționarea serviciilor de reintegrare socială și de supraveghere a infractorilor
- Septembrie 2001 – se înființează 27 de servicii de probațiune pe lângă tribunale, în subordinea Direcției de Probațiune din Ministerul Justiției
- Decembrie 2002 – încă 14 servicii

2001 – 2013

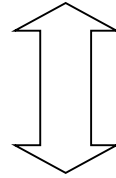
- **Legea 278/2006** – introduce serviciile ca instituții care se ocupă de supravegherea condamnaților la pedeapsa închisorii cu suspendare sub supraveghere, alternativ cu judecătorul desemnat
- Libertatea supravegheată în cazul minorilor – subsidiar față de părinți
- Consiliere pentru victimele infracțiunilor (începând din anul 2005)

Noile coduri: 2014 – prezent

- Codul penal art. 116 – referatul de evaluare
- Codul penal art. 83, art. 93, art. 101 – **referire expresă la serviciile de probațiune** - supraveghere directă a persoanelor majore cu privire la care s-a dispus amânarea aplicării pedepsei sau suspendarea sub supraveghere a executării pedepsei ori cu privire la care s-a dispus liberarea condiționată, în anumite condiții
- Codul penal art. – art. 117 – 121 C.p. coordonare a supravegherii minorilor în cazul măsurilor educative neprivative de libertate
- **Legea 252/2013 – Legea probațiunii**
- Legea 253/2013 – măsuri și sancțiuni neprivative de libertate
- Legea 254/2013 – măsuri și sancțiuni privative de libertate

Noul Sistem de Probațiune

DIRECȚIA NAȚIONALĂ DE
PROBAȚIUNE



42 SERVICII DE PROBAȚIUNE

- **Nivel central** – Direcția Națională de Probațiune - 37 angajați
- **Nivel local** - 42 servicii de probațiune: 377 personal de probațiune, licențiați în asistență socială, sociologie, drept, psihologie sau pedagogie, 42 dintre aceștia fiind șefi ai serviciilor

Noul Sistem de Probațiune

- Competențe extinse pentru personalul de probațiune
- Putere de decizie mai mare
- Încurajăm organizațiile din comunitate să participe alături de noi la procesul de executare a măsurilor și sancțiunilor necustodiale
- O strategie sustenabilă pentru atragerea de fonduri externe
- Sistemul român de probațiune continuă să fie organizat separat de administrația penitenciarelor, dar între noi există o foarte bună comunicare și un parteneriat autentic

Schimbarea instituțională

Vechea organizație

- **Direcția de Probațiune în cadrul Ministerului Justiției (16 posturi)**
- **42 servicii de probațiune susținute prin bugetul instanțelor de judecată - tribunale (280 consilieri de probațiune)**

Prezenta organizație

- **Direcția Națională de Probațiune(DNP) în cadrul Ministerului Justiției (90 posturi)**
- **42 servicii de probațiune susținute prin bugetul DNP (377 consilieri de probațiune)**
- **In 2017 – 187 noi consilieri de probațiune**

Competențe principale

Anterior procesului penal (procurori)	Proces penal (judecători)	Punerea în aplicare a sancțiunilor (comunitate și judecători)	După liberare (comunitate și judecători)
Referate de evaluare pentru minori	Referate de evaluare pentru minori	Minori - 4 măsuri educative	Liberarea din centrul de detenție
	Rapoarte de evaluare pentru adulți	Amânarea aplicării pedepsei; Suspendarea executării pedepsei + munca în folosul comunității	Liberare condiționată ≥ 2 ani

Schimbări în privința referatelor/rapoartelor de evaluare

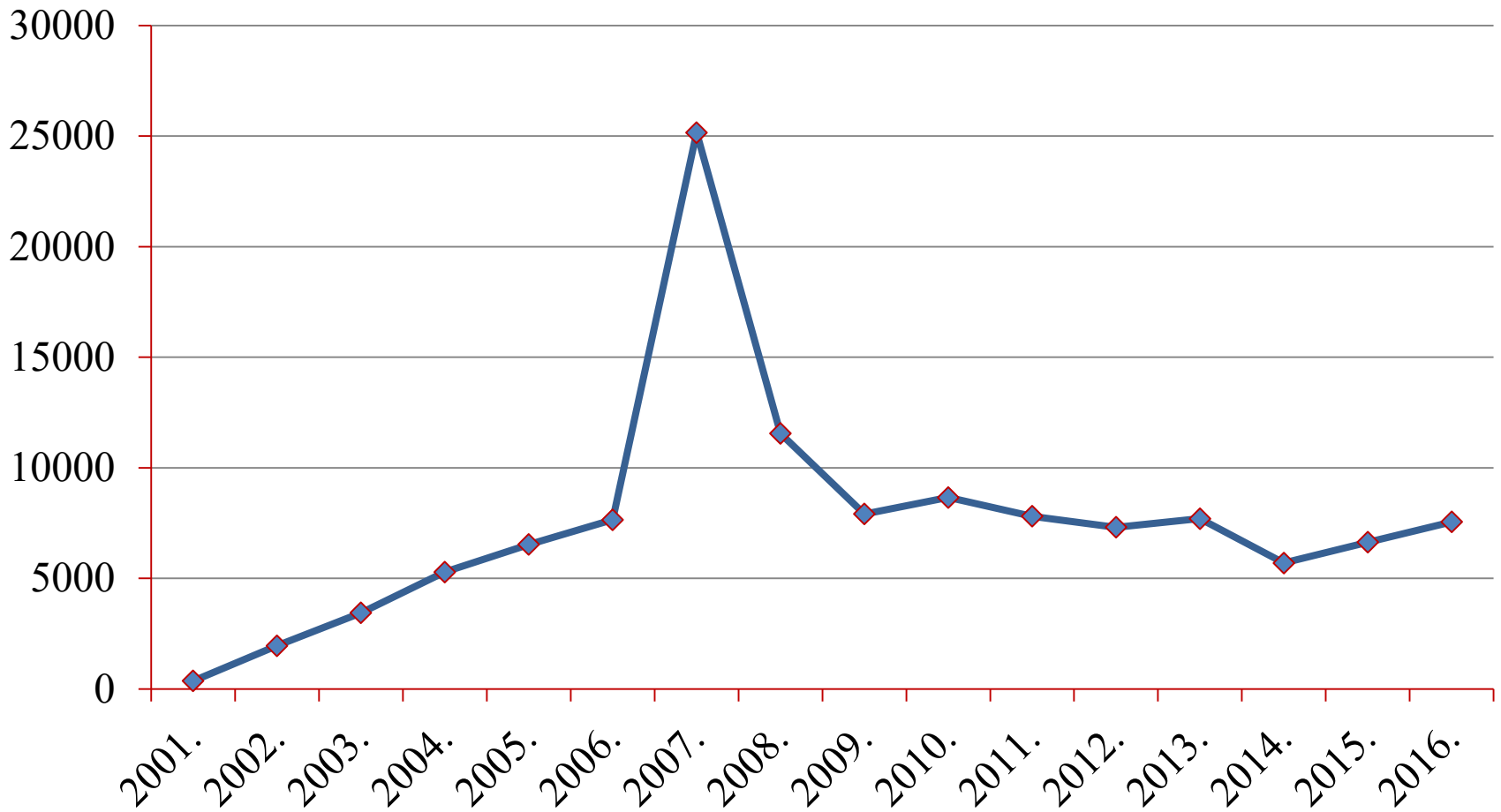
Atribuții vechi

- Întocmirea de referate de evaluare pentru minori – Parchet
- Întocmirea de referate de evaluare pentru inculpați minori și majori – instanța de judecată;
- Întocmirea de referate de evaluare pentru inculpați minori și majori, la solicitarea instanței de judecată, în cazul încălcării măsurilor și obligațiilor ce le-au fost impuse

Atribuții în prezent

- Întocmirea de referate de evaluare pentru minori – Parchet
- Întocmirea de referate/rapoarte de evaluare pentru inculpați minori și majori – instanța de judecată;
- Întocmirea de referate/rapoarte de evaluare:
 - în scopul modificării obligațiilor;
 - în cazul încălcării măsurilor sau obligațiilor;
 - în cazul înlocuirii unei măsuri educative privative de libertate cu măsura asistării zilnice;
 - în cazul liberării minorilor din centrul educativ sau de detenție.

Referate/Rapoarte de evaluare



Schimbări – măsuri educative

Atribuții vechi

1 singură măsură necustodială ce implică supraveghere din partea serviciului de probațiune:

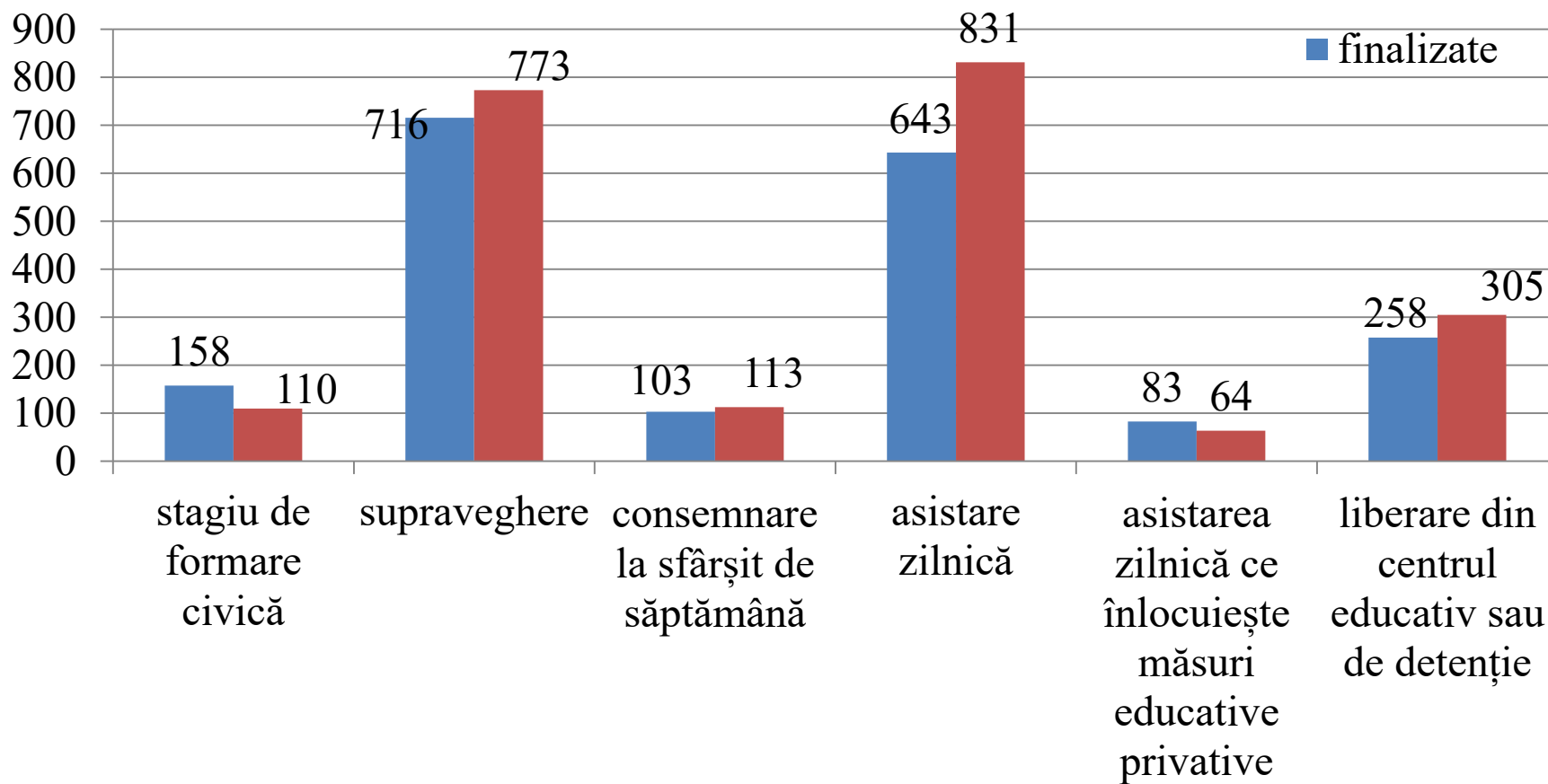
- **Măsura educativă a libertății supravegheate**

Atribuții în prezent

4 măsuri educative necustodiale:

- **Stagiul de formare civică**
 - **Supravegherea**
- **Consemnarea la sfârșit de săptămână**
 - **Asistarea zilnică**

Raportul intrări – ieșiri minori



Schimbări – supraveghere majori

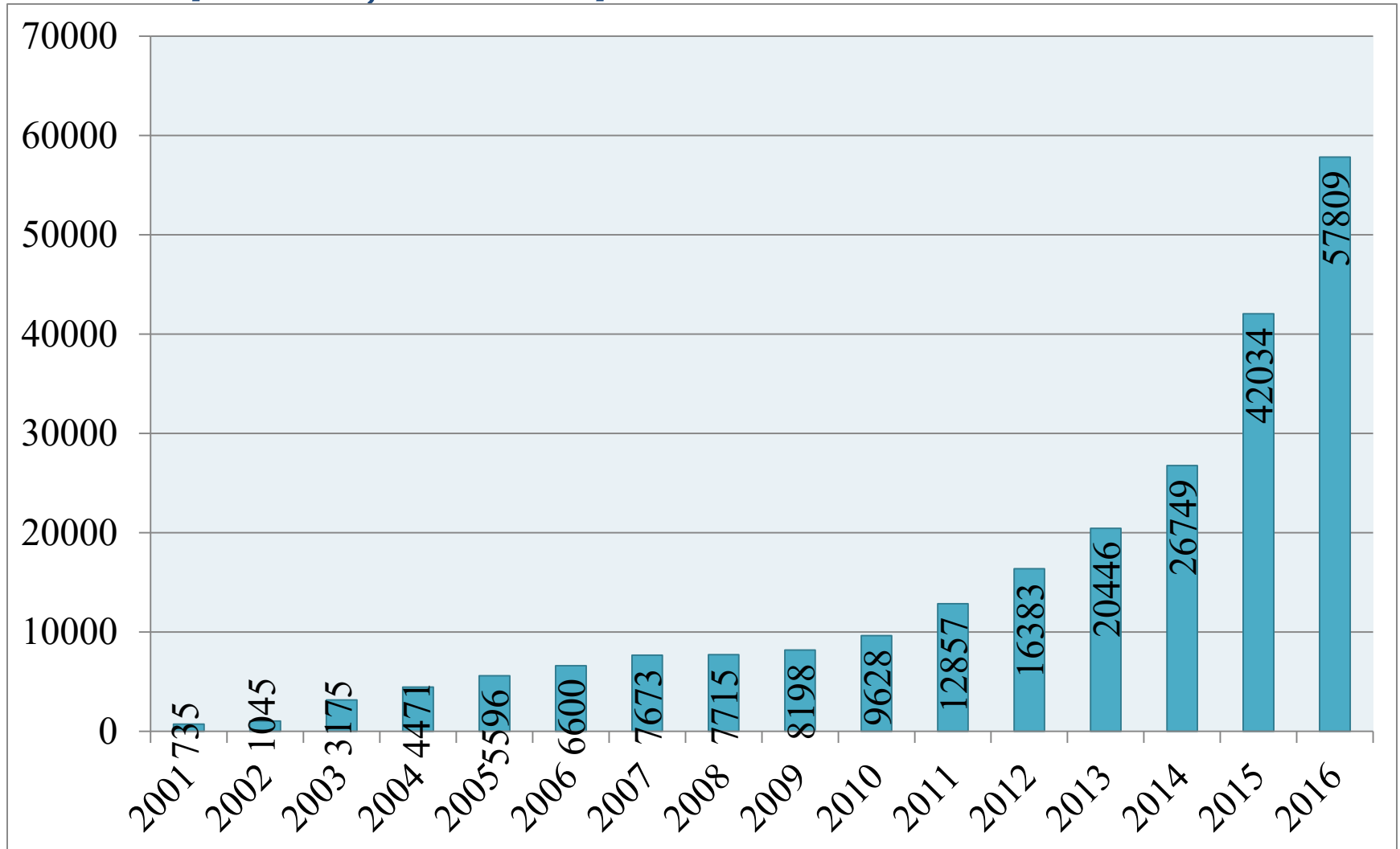
Atribuții vechi

- Supravegherea modului în care persoanele condamnate respectă măsurile și obligațiile ce le-au fost impuse de instanța de judecată pe durata termenului de încercare
- Serviciile de probațiune **pot** derula programe de reintegrare socială specializate pentru persoanele condamnate menținute în libertate **la cererea lor**

Atribuții în prezent

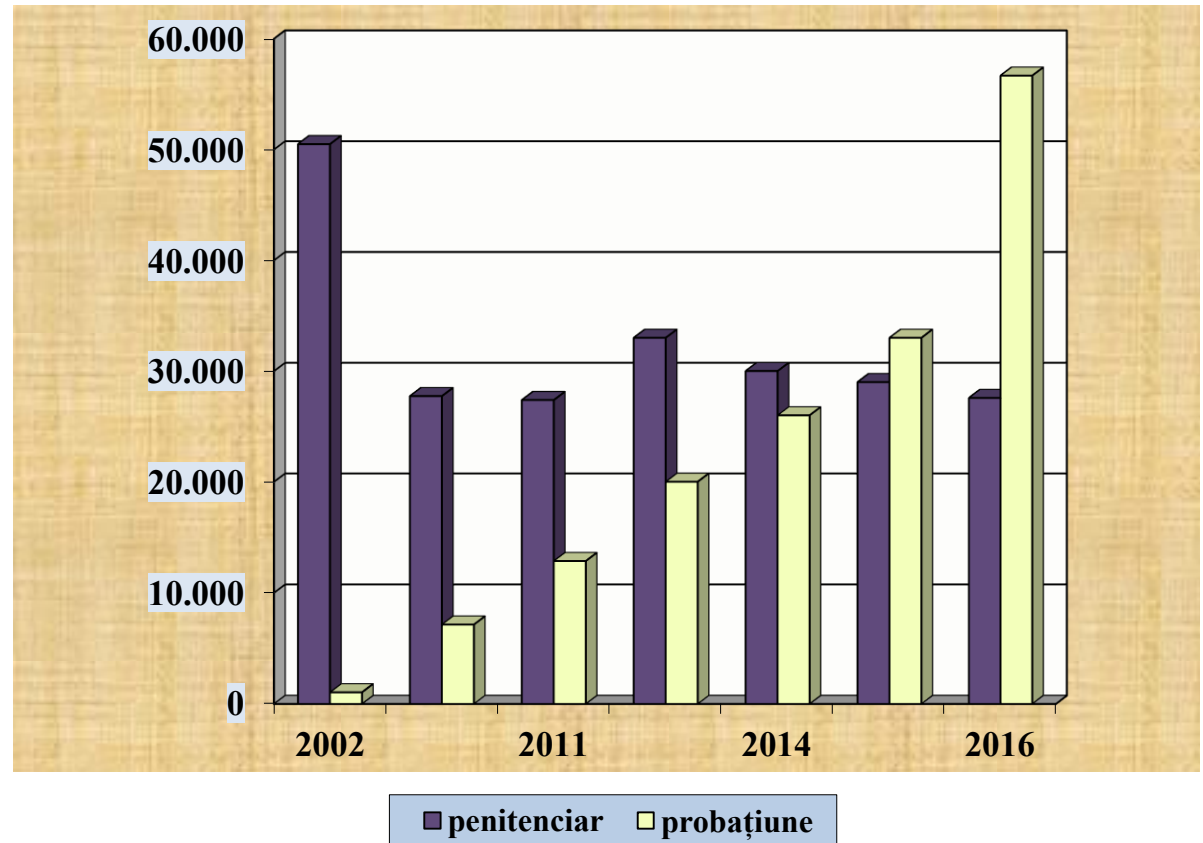
- Supravegherea modului în care persoanele sancționate/condamnate respectă măsurile și obligațiile impuse de instanța de judecată pe durata termenului de supraveghere
- Supravegherea obligației de a presta o activitate neremunerată într-o instituție de interes public (doar pentru infractori adulți);
 - interdicția de părăsire a țării fără permisiunea instanței;
 - participarea la un program de reintegrare specializat.
- Serviciile de probațiune **trebuie** să deruleze programe de reintegrare pentru persoanele sancționate/condamnate

Numărul de sentințe încredințate serviciilor de probațiune în perioada 2001 - 2016



Supravegherea

- Creștere constantă a activității în sistemul de probațiune



The Role Of Probation in Europe

Sue Hall
Former Vice President, CEP

23 February 2017
Bucharest



Confederation of European Probation

www.cep-probation.org

Confederation of European Probation



- Established in 1981 by 10 countries
- Today – 60 member organisations in 34 countries and 38 jurisdictions – the largest probation network in Europe
- Goals:
 - To **unite** probation organisations and individual professionals throughout Europe
 - To **professionalise** the probation sector in Europe
 - To **promote** the social inclusion of offenders through community sanctions and measures

What is Probation?

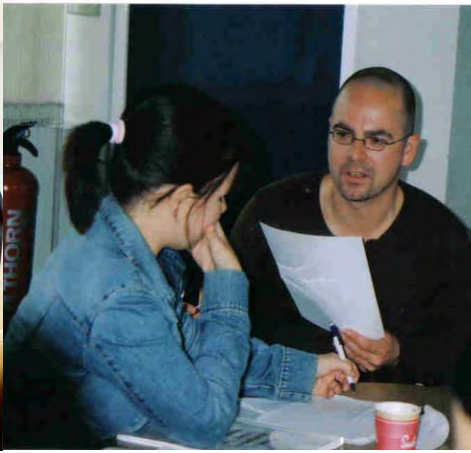


- Probation means different things in different countries:
 - Alternative to custody
 - Community sentence in own right
- Range of organisational forms:
 - Degree to which run by the state
 - Participation of charities and not-for-profit
 - Level of privatisation
- Tasks and responsibilities vary across Europe:
 - Pre-trial work / pre-sentence work
 - Community sanctions
 - Resettlement post-custody
 - Victim-offender mediation
 - Risk assessment and public protection

What is Probation?



- Probation – ‘not a single or uniform intervention of an easily defined sort’. It can include a range of approaches:
 - Individual supervision
 - Groupwork
 - Cognitive behavioural programmes
 - Community service
 - Electronic monitoring
 - Drug treatment programmes
 - Restorative approaches
 - Skills development (e.g. literacy, employability)
 - Risk assessment and management
- Essence of probation ‘less in its tasks or organisation than its values’



European Probation Rules



Principle (1)

Probation agencies shall aim to reduce reoffending by establishing positive relationships with offenders in order to supervise (including control where necessary), guide and assist them and promote their successful social inclusion. Probation thus contributes to community safety and the fair administration of justice.

Role of Probation



- Reduce reoffending
- Public protection – risk management
- Enforce sentence of the court – penalties for non-compliance
- Balance offender focus with victim focus

Reducing Reoffending - What Works!



- Last 30 years – revolution probation’s role in reducing reoffending. Much greater evidence base – which sentences more likely to be effective?
 - Growth in use of cognitive behavioural groupwork programmes.
- RNR
 - **Risk:** match the level of service to the offender’s risk of reoffending
 - **Need:** assess criminogenic needs and target them in treatment
 - **Responsivity:** maximise the offender’s ability to learn from a rehabilitative intervention by providing cognitive behavioural treatment and tailoring the intervention to the offender’s learning style

(Andrews and Bonta)

Desistance Research



- Desistance - the process of abstaining from crime amongst those who had previously engaged in a sustained pattern of offending
- What helps?
 - Getting older and maturing
 - Strong supportive family relationships
 - Recovery from addiction
 - Employment
 - Hope and motivation – motivated offenders are more likely to succeed
 - Restoration - something to give – opportunity to enhance lives of others
 - Having a place within a non-criminal social group
 - Not having a criminal identity – seeing self as ex-offender
 - Being believed in

(Maruna, 2010)

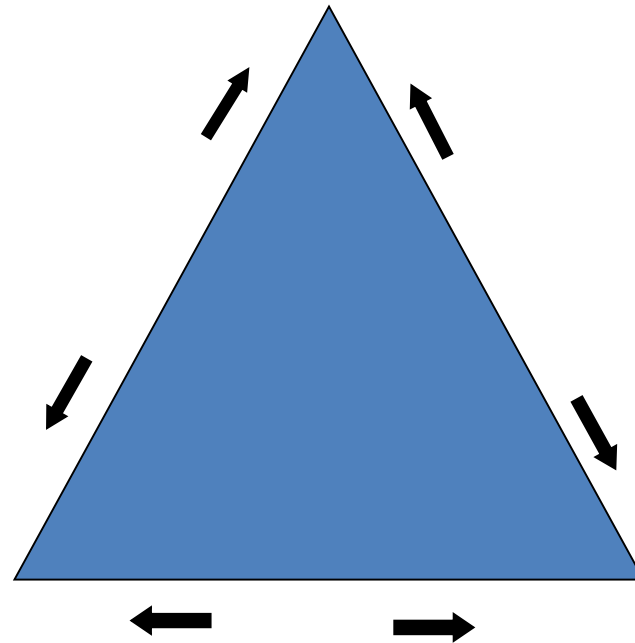
The zig-zag journey towards desistance



Age and levels of maturity

Social capital
Social networks & opportunities

Influence of family / social bonds
Social environment - norms
Employment opportunities
Accommodation



Human capital
Personal resources

Motivation
Identity – how see self
Problem solving skills
Education
Vocational training
Work experience
Health - drug rehabilitation

Implications for Probation Practice



- Individualised assessment which is holistic and targets criminogenic needs
- Relationship with probation worker
- Motivation and hope
 - The message needs to be constantly reinforced that the offender is responsible for his/her own life, that change is possible and that there is hope
- Agency and empowerment
 - The offender needs to be actively engaged in planning and making decisions about their own future and to be held to account.

Resettlement



- Prisoners already marginalised before their prison sentence – more likely to have experienced unemployment, homelessness, health problems, disrupted family relationships
- *‘Even the best custodial treatment programme is often only an island of structure and support in a stream of instability and deprivations during life’ (Loesel)*
- Very high re-offending rates for ex-prisoners – particularly those who have served short sentences

Principles of Successful Resettlement



- The same principles as for community sanctions but added element of managing the transition from custody
- Plan for re-entry from the start of the sentence
- Individually tailored plan
- Getting the basics for survival in place.
- Continuity of services 'through the gate' – e.g. supervising officer, drug treatment etc
- Support through transition - engage people important to the prisoner

Public Protection – Risk Management



- Risk assessment and management:
 - What is the likelihood that someone will reoffend?
 - What will be the impact if they do?
 - What can be done to mitigate the most serious and harmful impact?
- Who should go to prison? Who could be managed reasonably safely in the community?
 - Offender's history – circumstances in which they offended in the past
 - What level of restriction is compatible with fair justice?
- Multi-agency approach – probation, police, local authorities, prisons

Victim Work



- Majority of European Probation Services see themselves as having a responsibility in relation to victims
 - Provision of information
 - Ensuring the victim's voice is heard in court reports / Victim Impact Statements
 - Victim-Offender Mediation - direct meeting between offender and victim with 3rd party mediating
- The opportunity to 'pay back' can have a powerful impact in reducing reoffending

Restorative Approaches



- Important to ensure restorative initiatives are integrated. It is more of a challenge for more established probation services to move from offender-orientated service to victim orientated.
- With new services (e.g. E Europe) there is more scope to build into design (e.g. Czech Probation and Mediation Service) or where whole service is re-commissioned (e.g. Austria)
- Must be sufficient resources

Conclusions



- Expansion of probation across Europe – range of forms and structures
- Whilst all have human rights and values at core, different jurisdictions give different weighting to way role is seen:
 - Rehabilitation
 - Enforcement
 - Public protection
 - Victim work / restorative approaches
- Well-targeted and properly resourced, probation can lead to a reduction in reoffending and support social reintegration



Thank you!

Merci!

Danke!

感謝

Gracias!

Благодаря!

Grazie!

www.cep-probation.org

info@cep-probation.org

Supported by the Justice Programme
of the European Union



Alternatives to detention & restorative justice

Bucharest, 23 February 2017



Co-funded by the Justice
Programme of the European Union 2014-2020

Dr. Bart Claes
Executive board EFRJ
bart.claes@ehb.be

Outline

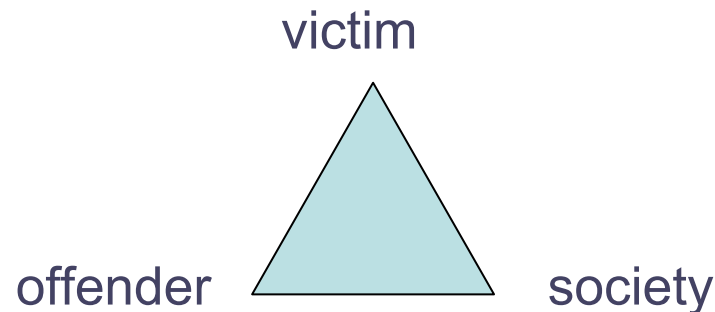
1. EFRJ in short
2. Restorative Justice
3. RJ as an alternative to detention
4. International standards
5. RJ in detention
6. Conclusion

1. EFRJ in short

- The European Forum for Restorative Justice **aims to help establish and develop victim-offender mediation and other RJ practices.**
- Every person in Europe shall have ***the right of access to RJ*** services, at any time and in any case.
- Advise, training, research, cooperation & lobby
- Reaching in Europe: RJ service providers (directly); participants of RJ (indirectly – victims of crime: approx. 200,000; offenders: approx. 180,000), victim support organisations (indirectly), actors of the criminal justice system (indirectly).

2. Restorative Justice

- Harm central
- The RJ triangle:



- "The four Rs" of RJ
 - Re-personalisation
 - Representation/participation
 - Reparation/restoration
 - Re-integration
- Forms: VOM, conferencing, circles
- In all stages of the criminal justice system

And does it work?

Meta studies (US/UK/NZ/Eur) show:

- high satisfaction rates
- feeling of justice increases
- taken serious, taking responsibility
- less recidivism
- a new beginning
- Research: Restorative justice: the evidence, Shermann & Strang 2007; Shapland 2008; Claes 2016

3. RJ as an alternative

- Prevention: to stay out of the Criminal Procedure
- Schools, neighborhoods
- Police; Public Prosecutor
- Judge; Enforcement agencies
- They can all refer to VOM or conferencing

- It can end there, it can also be used in addition to another sanction
- It can lead to: less incarceration, less costs & a more humane, safe society

4. International standards

- 1999 Council of Eur Rec No. R (99) 19 on mediation in penal matters
- 2001 EU Council Framework Decision on the standing of victims in criminal proceedings & 2012 Victim Directive
- 2002 UN minimum standards on RJ practices
- all JJ & most CJ instruments since 1996

> RJ as a priority in the reaction on crime

4. RJ in the EU Victim Directive

Article 12

Right to safeguards in the context of restorative justice services

- 1. Member States shall take measures to safeguard the victim from secondary and repeat victimisation, from intimidation and from retaliation, to be applied when providing any restorative justice services. Such measures shall ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services, subject to at least the following conditions:**

Member States shall take measures to [...] ensure that victims who choose to participate in restorative justice processes have access to safe and competent restorative justice services [...].

4. New CoE Rec

- Draft Recommendation CM/Rec (2016) on the European Rules on community sanctions and measures
- *Aware that with the passage of time, new possibilities for a more effective use of community sanctions and measures emerge and that therefore **imprisonment must be used only as measure of last resort**;*
- Idea: establish a set of standards to enable national legislators, deciding and implementing authorities and practitioners **to provide a just and effective use of community sanctions and measures**. This application must take into account the need to protect society and maintain legal order and at the same time support **social rehabilitation**, while also enabling offenders to make **reparation for the harm** they have caused

4. Role RJ CoE Rec

Examples of community sanctions and measures that are commonly in use include:

- alternatives to pre-trial detention
- probation / community supervision as an independent sanction imposed without a sentence to imprisonment;
- suspension of the enforcement of a sentence to imprisonment with imposed conditions;
- community service (i.e. unpaid work on behalf of the community);
- **victim compensation / reparation;**
- **victim-offender mediation;**
- other

4. Rule 9 CoE Rec

9. In appropriate cases, and having due regard to the rights and needs of victims of crime, **offenders should be enabled and encouraged to make reparation for their offences to the victims or to the community.**

*This Rule insists that such RJ practices are **to be encouraged in suitable cases**. Particular care must be taken to make sure that **both the offender's and the victim's interest and rights** are fully respected.*

5. RJ in detention

- Working with RJ advocates
- Victim awareness programmes & trainings
- Sometimes also for internal conflicts (prisoner-prisoner / prisoner-staff)
 - in NL/B in youth custodial institutions & several prisons
 - in GER (e.g. Schleswig Holstein prison law) VOM can replace disciplinary procedure and disciplinary measure
 - first aspect that makes it an alternative to conventional imprisonment
- Victim offender mediation in prison (NL/B/UK)

6. Concluding reflections

- International standards: RJ as a priority and as a community sanction or measure
- RJ as an alternative to detention
- RJ in prison
- RJ as a way to change criminal justice
- What to do to get **full access** to RJ?
- Access should be self-determined: part of RJ's autonomy right of parties – mere referral-based access is a clear contradiction/restraint of parties' autonomy
- **Equal balance** between victim-offender-society



About the Forum

Events

Projects

Resources

Subscribe to the newsflash

your e-mail address



[Read our newsletters](#)

The European Forum for Restorative Justice aims to help establish and develop victim-offender mediation and other restorative justice practices. Every person in Europe shall have the right of access to restorative justice services, at any time and in any case.

RJ WEEK 2016



UPCOMING EVENTS

18/10/2016

PhD defence on RJ in intercultural settings

Brunilda Pali, one of the newly elected Board members of the EFRJ, will defend her doctoral thesis on Monday 17 October 2016 at KU Leuven.

[Read more](#)

DESISTANCE AND RJ

The research report and practical guidelines of the EU funded project 'Desistance and Restorative Justice: mechanisms for desisting from crime within restorative justice practices' are available online. All research reports of projects coordinated by the EFRJ can be downloaded in a .pdf format from the EFRJ website.

[Read more](#)

NEWS

23/09/2016

Host the EFRJ conference 2018!

The EFRJ invites its members to propose a venue to host the 10th international conference of the European Forum for Restorative Justice, due in June 2018....

[Read more](#)

Desistance from crime and restorative justice in prison

Research results and reflections

Desistance from crime and restorative justice in prison

- Combining (New) directions in research on Restorative Justice:
 1. Focus on the social and moral rehabilitation
 2. Focus on the capacity of the intervention to impact positively on the offender
 3. Focus on offenders' likelihood of stopping committing criminal offences

Desistance from crime and restorative justice in prison

- Combining (New) directions in research on Desistance from Crime:
 1. Desistance as a process of stopping committing crime
 2. Process of “two steps forward and one back”
 3. Choice as a decision to give up crime
 4. Focus on motivational and cognitive elements
 5. Focus on fostering social and human capital
 6. Focus on addressing the changing, rehabilitating or reforming potential of the individual prisoner

Desistance from crime and restorative justice in prison

- Combining (New) directions in research on Life in Prison:
 1. Focus on restorative justice practice (VOM) in relation to the institution's structural and cultural elements
 2. Focus on the relationship: daily social life – desistance from crime – restorative justice practice (VOM)

Desistance from crime and restorative justice in prison

Comparative qualitative research:

- Prison of Oudenaarde (Belgium) and HMP Leeds (England and Wales)
- Long-term imprisonment (>5 years prison sentence)
- 4-6 weeks of observations on the prison wings (12 hours/day)
- 30 interviews of prisoners who participated in a victim-offender mediation in prison

Fieldnotes - Setting the scene

Victim offender mediation

- “I had a hard life, I still have. Not everything was my choice, that needs to be acknowledged as well. That is important for me. I am not the only one to blame”.

(prisoner, 22, robbery, interview 02/02/16)

- “I did that for me, I want to apologise to the victim, and answer any questions, if I can. I wrote a letter to the victim, 6 pages, my whole life story, and everything that happened that night. (Bart) Have you done that before? (prisoner) No, never, Cathy (mediator), helped me, it took 2 weeks and a lot of thinking (starts laughing)”.

(prisoner, 25, violent assault, fieldnotes 23/01/16)

Fieldnotes - Setting the scene

Victim offender mediation

- Role of the mediator
- Practice as a space of trust and openness
- It is about their life story (crime)
- Being able to take up responsibility
- Vulnerability and their own victimisation
- Strong focus on crime and victim
- Less focus on how to deal with the mediation process in prison

Fieldnotes - Setting the scene

Desistance from crime

- “I told you Bart how I want to change, what I feel when thinking about my mistakes. I cannot sleep at night just thinking about what I have caused, not just for me and my family, also for the victims. I did apologise, afterwards, in an encounter in prison. Not easy at all, I was as nervous as for my first fight. Incredible how strong they were, and how small I was. That week was one of the hardest one’s. The encounter took me back to things I have done, it is like a new image of those people burned in my brains. My wife was there as well, that was the hardest thing, seeing her reacting with kindness to the victims, and being there for me as well (silence, he looks down, seems emotionally touched, looks up again). Fuck, it was hard, still is. It changed me Bart.”

(prisoner, 31, home-jackings, fieldnotes 02/06/16)

- “That is one of the things that makes me different in here, I do want to change, that is my decision to make and that is why I asked to do restorative justice.”

(prisoner, 23, violent assault – domestic violence, interview 13/02/16)

Fieldnotes - Setting the scene

Desistance from crime

- Reflecting about choices in life, and effects on their lives and that of others (victims)
- Cognitive shifts – insights / empathy
- Desire to repair the harm caused (context and victim)
- Constructing a narrative (around the decision to stop committing crime)
- Desire to change and the question of HOW
- Talking about their own victimisation
- Talking about remorse, shame and regret
- Seeking closure – future oriented narrative (outcome agreement)
- Expressing hope
- Wishing to desist from crime
- Creating and supporting a ‘community of care’

Fieldnotes - Setting the scene

Life in prison

- “Life in prison is living three lives at the same time. One on the wing, you see the macho’s here walking around, putting on an image that they are strong, fearless. Being on the wing, prison talk is like talking about nothing. And a life, me alone in my cell. That is the hard one, when you cannot escape from yourself anymore, caught up in your own thoughts. And also one when I am talking with my wife, or even my personal therapist, that is when I really can open up. Oh no, sorry Bart, (he starts laughing), 4 lives, one towards the system, where I need to say what they want to hear. Everybody wants to get out of prison (continues laughing). Prison still is a jungle Bart, only the strong will survive, in body and mind”

(prisoner, 49, murder, fieldnotes 21/05/16)

- “You don’t share that (VOM) here, you keep it to yourself. (Bart) Why? (prisoner) Because it is private. You just don’t mention that. If someone asks, I will say it is restorative justice. People don’t care anymore, they are not interested anymore. (Bart) Would you give them more information if they would ask? (prisoner) It depends on who he is.

(prisoner, 29, robbery, fieldnotes 11/01/16)

Fieldnotes - Setting the scene

Life in prison

- Everyday social interactions
- Small networks of relationships
- Set of unwritten rules
- Money talks, informal economy (with/and) drugs
- Masculinity
- Split between life in prison cell and on the wing
- Not in prison talks/discours: victims, regret, shame, change, taking up responsibility, reparation, victimisation

Desistance from crime and restorative justice in prison

Concluding reflections:

- “This (VOM) really helped me in thinking on who I was, who I want to be, and what I will do”
 - ➔ VOM as a trigger that produces the desire, the will, the narrative to change
 - ➔ VOM as a tool for a (new) social identity
- “To hear that from my victim, it made me more certain that I will not do that again, I can close that bad chapter now”
 - ➔ VOM facilitates an augmentation of positive emotions – reintegrative planning
 - ➔ avoiding destructive, disintegrating effects of un-channelled emotions of guilt, shame and remorse – self-destructive stigma

Desistance from crime and restorative justice in prison

Concluding reflections:

- “I want to change, I really do, but that is not possible here, life on the wing makes it almost impossible, unless you isolate yourself from life inside”
 - ➔ prison environment doesn't destruct the will to change
 - ➔ disabling environment to practice the desire to change
- “Dealing with your crime, I mean, dealing with the emotions, there is no support in prison, that pain cannot be shared. No, not true, a little bit in a mediation, but their focus is mainly on the victim. Or on me in a sense of doing something for the victim.”
 - ➔ prison environment blocks emotional transparency
 - ➔ linking mediation and moral, social rehabilitation

Alternatives to detention & restorative justice

Bucharest, 23 February 2017



Co-funded by the Justice
Programme of the European Union 2014-2020

Dr. Bart Claes
Executive board EFRJ
bart.claes@ehb.be

THE NATIONAL ADMINISTRATION OF PENITENTIARIES



Co-funded by the Justice Programme of the European Union 2014-2020

Romanian prison system

20,121,641 inhabitants
prison population rate:
140 (23rd place in Europe)

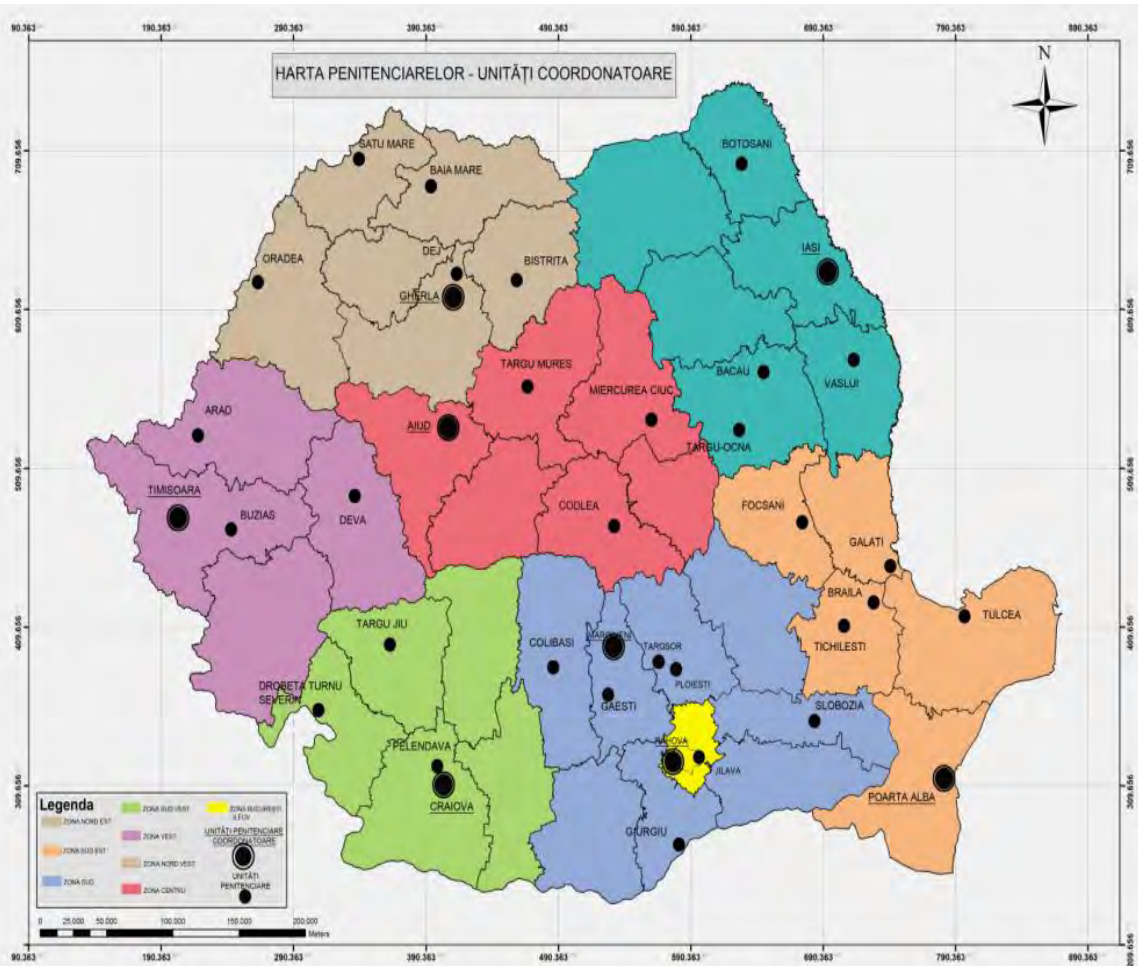
27.600 inmates
female prisoners: 5.1%
minors: 1.5%
pre-trial: 8.2%

45 units of detention

12.141 staff

prison service is
subordinated to Justice
Ministry

very high dynamic of staff
in 2016:
(1826 retired/1424 new
comers)



STATISITCS

- ❖ 17 prisons having open and semi-open regime
- ❖ 17 prisons having close and high security regime
- ❖ 23 units with special sections for preventive arrest
- ❖ 2 detention centers with 540 persons
- ❖ 1 prison for women (plus 6 sections specially designed for women, in other prison units)
- ❖ 2 educative centers with 376 persons
- ❖ 289 foreign inmates from 46 different countries
- ❖ 10,574 recidivists in the system
- ❖ 6,425 inmates with criminal records and 10,599 without criminal records

DETENTION REGIMES

- ❖ Preventive arrest– 2315 inmates
- ❖ Quarantine - 642 inmates

Executing regimes :

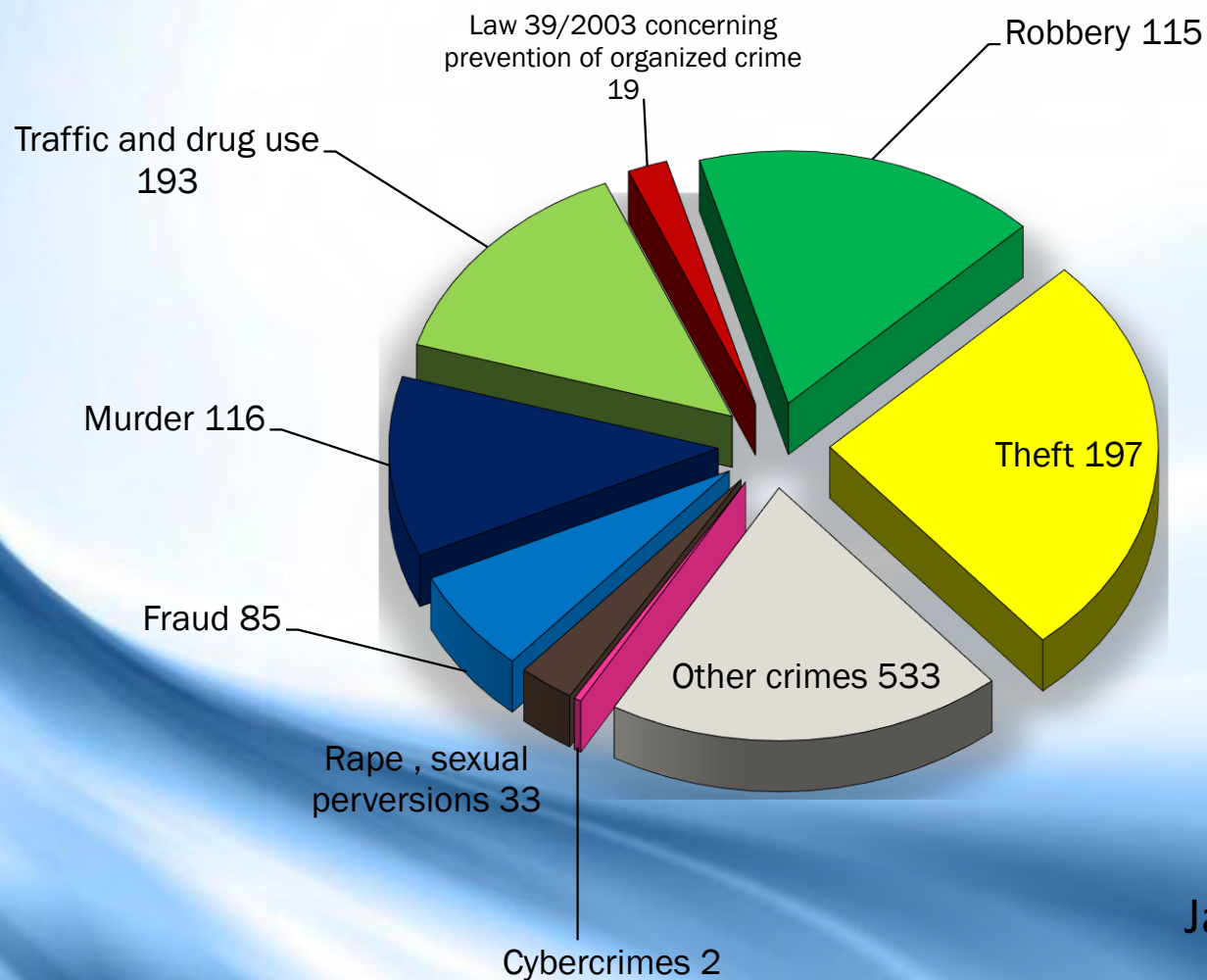
- ❖ The set of rules which underlay the execution of the freedom depriving penalties;
- ❖ Based on the progressive and regressive systems:
 - High security regime – 1943 inmates
 - Close regime – 7428 inmates
 - Semi-open regime – 10207 inmates
 - Open regime – 4022 inmates

BUCHAREST JILAVA PENITENTIARY



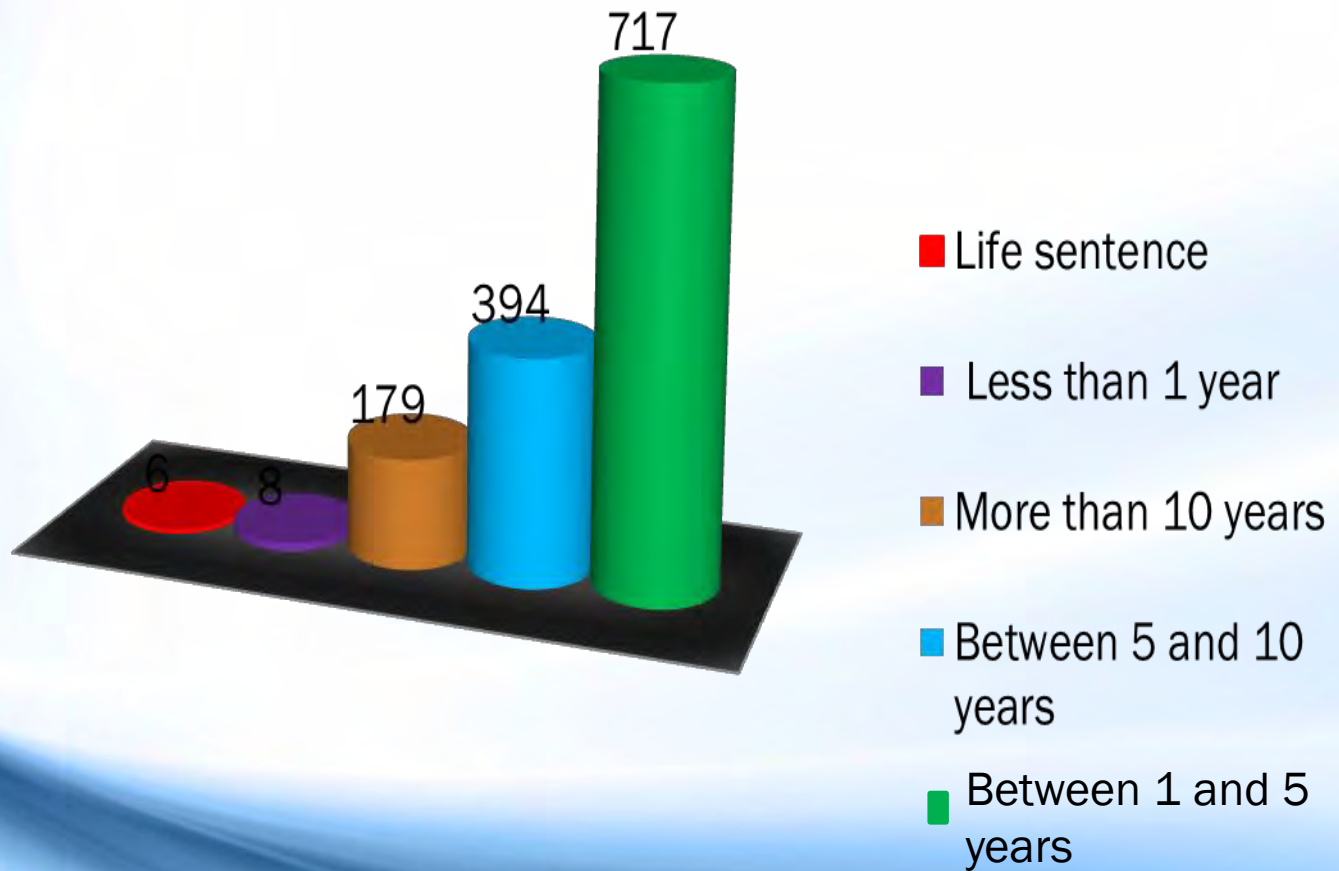
CLASSIFICATION BY TYPE OF CRIME

NUMBER OF INMATES - 1,293 semi open regim – 180 and open regim - 1113



January 2017

CLASSIFICATION BY CONVICTION DURATION



FOREIGN INMATES

Bulgaria – 10

China - 1

Egipt - 1

Franța – 1

Siria – 2

Irak – 2

Iran – 3

Liban – 2

Letonia -2

Pakistan - 1

Iordania – 2

Italia - 1

Turcia - 11

Ucraina - 1

OVERCROWDING IN PRISONS

Compliance with European rules on conditions of detention in Bucharest Jilava Penitentiary :

- **CPT rule (4 sqm) – 22 detention rooms – 111 inmates**
- **Internal rule (6 cubic meters) - 43 detention rooms – 389 inmates**

Total capacity – 1293 inmates

Capacity on 4 sqm – 678 inmates – overcrowding index 190,70%

Capacity on 6 cubic meters – 1379 inmates – occupancy index 90,92%

THE RIGHT TO BE VISITED

open regime – 6 visits/ month
semi open regime – 5 visits/ month



* 1 visit / quarterly
* additionally intimate
visit, as a reward

FRIENDLY VISIT SPACE

- ❖ inmates can request to benefit from their right to visit in this space if they have children aged up to 7 years
- ❖ it provides a suitable environment for the child's emotional balance



PACKAGES AND SHOPPING

937,50 LEI /
WEEK
210 euro

1 PACKAGE /
MONTH
+ additional
package as a
reward



BEING INFORMED

The information are posted on bulletin boards or through the information points within each section



Information about:

- legal situation;
- the number of rewards and sanctions;
- financial status;
- work situation;
- offer social reintegration activities;
- the number of credits accumulated;
- the list of the books from library;
- executional laws etc.

MEDICAL CARE

- permanent healthcare
- consult / admission to Jilava Penitentiary Hospital

2 general doctors

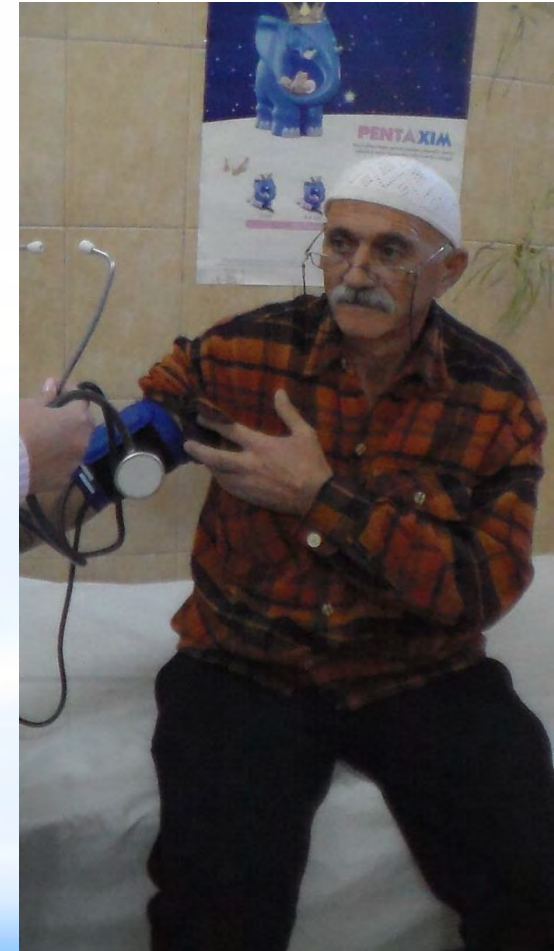
1 stomatologist

1 psychiatrist

9 nurses

1 pharmacy assistant

1 medical registrar



WORK ACTIVITIES



**36.66% OF INMATES IS CONSTANTLY INVOLVED
IN PRODUCTIVE ACTIVITIES**



EDUCATIONAL SERVICE AND PSYCHO-SOCIAL ASSISTANCE

THE NUMBER OF INMATES IN CONSTANTLY OVER 1200

Standard	Employed
1 educator officer/100 inmates	11 educators
1 education agent/400 inmates	3 education agents
1 technical agent/500 inmates	1 technical agent
1 sport monitor/500 inmates	3 sport monitors
1 priest/prison	1 priest
1 psychologist /100 inmates	6 psychologists
1 social worker/125 inmates	7 social workers

WE ARE THE LARGEST COLLECTIVE FOR SOCIAL REINTEGRATION IN THE SYSTEM

SCHOOLING AND TRAINING

- ❖ Primary education
- ❖ High school
- ❖ The possibility to attend higher education
- ❖ IT (ECDL certification included)
- ❖ Trainings: sales worker, tailor, hair stylist, typographer, seller etc.



❖ LIBRARY AND SPORT ACTIVITIES

- ❖ 14.000 books
- ❖ lecture room/hall
- ❖ acces Monday to Friday , from 08.30 to 17.00 and Saturday from 08.30 to 15.00
- ❖ 3 sport fields
- ❖ 1 gym



sports competitions
between prisons

THERAPEUTIC COMMUNITY PROGRAM

- ❖ program for former drug users
- ❖ opened in 2011, with the Norwegian funds
- ❖ 24 beds
- ❖ in 2016, we provided professional expertise to open a therapeutical centre in Gherla Prison, for women with mental health problems



FORT 13 JILAVA

- ❖ a historical monument;
- ❖ built just after Brialmont general plans as part of the City of Bucharest, defense belt with forts and batteries that surrounds Bucharest ring;
- ❖ it was used as a political prison, the first time after the 1907 uprising, and then after the Second World War;
- ❖ many of the personalities of historical, political, cultural wars were here and some have even been late on field execution Valley Peaches (Valley Wailing) near the fort;
- ❖ the last prisoners who were imprisoned here were the Revolution of 1989;
- ❖ currently, part of the former cells are already arranged memorial museum purposes.



IN THE FUTURE...

- ❖ we will continue to organize meetings with former residents of the therapeutic community program in partnership with organizations, the animal assisted therapy and "Respect Section" programmes
- ❖ greater involvement with the help of NGO's in the post release;
- ❖ implementing *The Ethnography of the Prisoner's Transitions* , we want to propose legislative changes in the executional domain, using the research from the project.



BUCHAREST JILAVA PENITENTIARY

Thank you!

Cristina Teoroc
cristina.teoroc@anp.gov.ro



Co-funded by the Justice Programme of the European Union 2014-2020



PRESENTATION OF THE FRAMEWORK DECISION 2008/947/JAI AND MASS SUPERVISION

IOAN DURNESCU
UNIVERSITY OF BUCHAREST

24.02.2017

OBJECTIVES:

- To present the main components of the FD
- To critically present the current state of affairs in terms of transposition and implementation
- To look into what mass supervision is and could be for the implementation of the FD

PREMISES

- Increased mobility among EU citizens
- Absence of an effective instruments to deal with people convicted in one state and having the residence in another
- Increased number of foreign prisoners in some states (2013 - 48,6% - AU, 72,2% - LUX)

PREMISES

- One of the objectives of EU – ‘develop the area of freedom, security and justice’
- One cornerstone of this is the principle of mutual recognition of judicial decisions
- Principle established in the European Council in Tampere, 1999 and reaffirmed in the Hague Programme in 2004.
- Mutual recognition is a process by which a decision taken by one judicial authority in one EU country is recognized and, if necessary, enforced by other EU country as if it was a decision taken by the judicial authorities of that latter state.

ORIGIN

- The precursor of this Framework Decision was the Council of Europe Convention on the *Supervision of Conditionally Sentenced or Conditionally Released Offenders*
- Open for signatures in 1964
- Entry into force in 1975
- Status as of Oct. 2014:
 - signatures not followed by ratifications – 5
 - number of ratifications – 19
 - out of 47 states of CoE

THE AIM OF THE FD

- to enhance the prospects of being reintegrated into society, by:
 - Enabling the person to preserve family, linguistic, cultural and other ties
 - Improve monitoring of compliance with probation measures and alternative sanctions
 - Preventing recidivism
 - Paying due regard to the protection of victims and the general public

MAIN PRINCIPLES

- No recognition if objective reasons to believe that the person was sentenced because of his/her sex, race, religion, ethnic origin etc.
- The FD should be applied in conformity with the right of EU citizens to move and reside freely in EU
- Several types of measures and alternative sanctions are obligatory (11)
- Some other may be added on a voluntary bases – EM included
- Forwarding can be to the MS where the sentenced person is lawfully and ordinarily resident
- Can be also to another MS if the executing state consents and social rehabilitation has better prospects: employment, a family member, study or training.
- Subsequent decisions made by the Executing state
- Exceptions in case of conditional and alternative sentence where the subsequent decisions may imply custody – Executing state may make a declaration that it will not take these decisions.

MAIN PARTS OF THE FD

- Introduction – 24 recitals
- 27 articles
- 2 annexes

SHORT PRESENTATION OF THE MAIN PARTS OF THE FD

1

- Aim – ‘facilitate the social rehabilitation ... improving the protection of victims and of the general public, and facilitating the application of the suitable probation measure or alternative...’
- Definitions for:
 - Suspended sentence – the execution cond. suspended with measures
 - Conditional sentence – the sentencing deferred with measures
 - Alternative sanction – non privative obligations and instructions
 - Probation decision – conditional release or other measures
- Each state will designate the competent authority – judicial or non-judicial (review).

TYPES OF PROBATION MEASURES AND ALTERNATIVE SANCTIONS (11)

- Inform – residence and working place
 - Not to enter
 - Limitations on leaving the territory
 - Instructions and limitations on behaviour, residence, education, training, leisure and professional activity
 - To report
 - To avoid contact
 - Avoid contact with different objects
 - Obligation to compensate
 - CS
 - To cooperate with PO or SW
 - To undergo treatment for addiction or therapy
-
- MS can be prepared to supervise more – notify the GS of the Council

CRITERIA FOR FORWARDING

- The competent authority of the issuing state (IS) may forward to the MS where:
 - The person is lawfully and ordinarily residing – in cases when they returned or want to return
 - To other MS – upon request, if the MS consents (declaration)

PROCEDURE OF FORWARDING

- The certificate – Annex 1
- The comp. authority directly to the comp. authority – written record for authenticity – only to one
- The judgment together
- To establish the comp. authority of the executing state: European Judicial Network - <http://www.ejn-crimjust.europa.eu/ejn/>
- and others !!!

CONSEQUENCES FOR THE ISSUING STATE

- Once the executing state has recognized the judgment and informed – the IS shall no longer have any competence for supervision or subsequent decisions – all go to ES.
- The executing state can refuse or postpone (if the certificate is not completed in the right way)
- The supervision and the application will be governed by the ES law

ADAPTATION

- If the nature or the duration of the probation measure or the alternative or the duration of the probation period are incompatible with the law in the ES, the comp authority may adapt them to the practice for equivalent offences.
- The adaptation will correspond as far as possible to that imposed !!!
- If the duration exceed the maximum – maximum in ES
- Never longer or more severe
- Inform the IS – withdraw the certificate or agree

DOUBLE CRIMINALITY

- Traditionally, the recognition took place on bilateral conventions if the crime involved was criminalized in both states.
- The FD states that checking for double criminality is not necessary for 32 categories of crimes (e.g. terrorism, human trafficking, computer related etc.)
- As in the other FD
- The council may add more
- The ES may recognize for other offences under the condition that they are criminalized under its law.
- When implementing – declaration if they will check for double criminality for those 32 or not.

GROUNDS FOR REFUSING RECOGNITION OR SUPERVISION

- If:
 - The certificate is incomplete or does not correspond
 - The person is not willing to return or to go to a third MS
 - The judgment or the decision includes measures that are not among those 11 or accepted by the ES
 - The person has been already sentenced in the ES for the same offence – ne bis in idem
 - When the did is not an offence in the ES and the ES declared that it will check for double criminality – exc. taxes
 - Immunity reasons
 - The person is below the age of criminal responsibility
 - The judgment was rendered in absentia – exceptions
 - The medical or the therapy are not possible to be supervised in the ES
 - The duration is less than 6 months
 - The offence was committed at least partly on the territory of the ES
- Before deciding – communication between IS and ES
- ES may recognize the judgment or the decision but may hold the right not to take subsequent decisions

TIME LIMITS

- The ES shall decide to recognize within 60 days from the receiving date
- If delays – inform the IS and estimate the realistic date.

SUBSEQUENT DECISIONS ASSUMED

- RULE: in case of non-compliance or new offence the ES will take all the subsequent decisions !
 - To modify the obligations or the duration of the prob period
 - To revoke the suspension or cond release
 - To impose a custodial sentence in case of alternative or conditional sentence
- In this case – inform the IS and consult on the right solution.

SUBSEQUENT DECISIONS REFUSED

- However, the states can declare it will not assume subsequent decisions if:
 - The alternative sanction does not contain the custodial sentence in case of non-compliance
 - In cases of conditional sentence
 - In cases where the judgment refers to an act that does not constitute an offence under the ES law
- In this case – transfer the jurisdiction back !
- ES has the obligation to inform the IS about the circumstances or findings related to revocation or new offence.
- IS has the obligation to inform on the decision
- The person has the right of a judicial hearing (also via video)

AMNESTY AND PARDON

- Can be granted by both states
- Only IS can apply for review of the judgment

END OF JURISDICTION OF THE ES

- If the person is absconding
- If the person has no longer lawful and ordinary residence in ES
- If a new criminal procedure starts in the issuing state

OTHERS

- Language – certificate in one of the ES languages
 - States can decide to accept translations in one of the EU languages
- Costs – on the ES except the costs within the IS territory.
- Other agreements – bilateral but only if they extend or support the FD
- Implementation – by 6th of December 2011
- Review – 6th of December 2014
- The certificate – quite complex and time consuming

THE CURRENT STATE OF ART

- In February 2017 – only 2 Member States did not transpose the FD: Ireland (ongoing) and UK
- Not a clear image regarding the number of transfers but: BE, NL and DE – 81 cases - up to August 2015.
- Observations
 - Still limited application – small numbers
 - Mainly in clusters – e.g. Germany, Holland, Belgium
 - Proportion of foreign prisoners still raising –
 - 2016 – 50,9- AU, 74,5% - LUX
 - Information still needs to reach the judiciary and para-judicial staff
 - Lack of informed consent – lack of information regarding how it is like to be under supervision in the ES
 - Lack of concrete procedures – when supervision starts in the ES?

RESOURCES

- European Judicial Network – <https://www.ejn-crimjust.europa.eu/ejn/>
- CEP - <http://www.cep-probation.org>
- The Belgian project - <http://www.euprobationproject.eu>
- ISTEP project - <http://www.probation-transfers.eu>

SOME SOLUTIONS

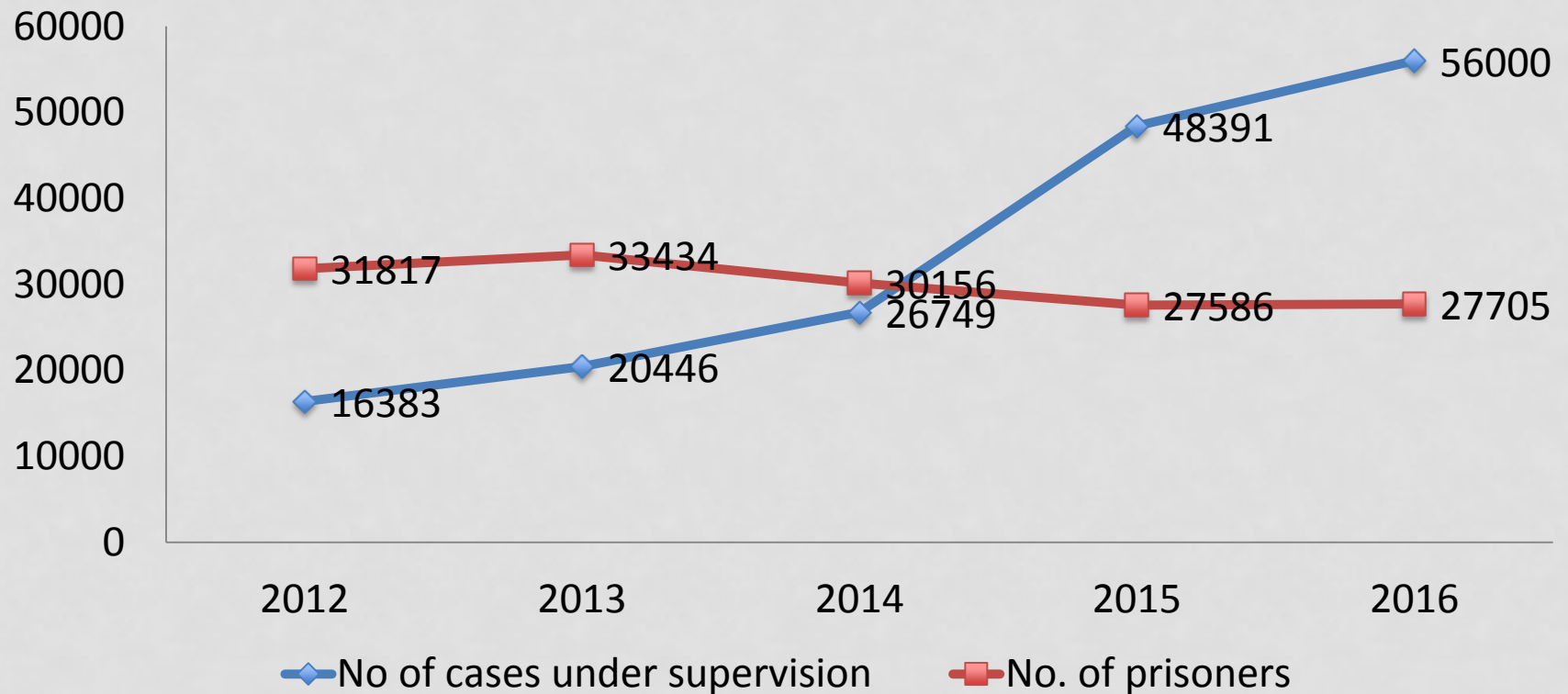
- More information available about probation systems – websites – see CEP
- Set up an Observatory at the European level dealing with probation issues – FDs, mass supervision, basic research etc.
- Direct and personal contact between competent authorities between cluster countries.
- Review of the FD by the EC – improving some parts of it.
- Learn from real cases
- More training for judiciary and para-judiciary
- Establish champions in each system that can disseminate information
- Start research on the impact evaluation

MASS SUPERVISION

- Mass probation - coined by Phelps (2013) in 50 states of US – the prison-probation link
- In Europe while the prison population is going down, the probation population is going up:
 - Germany – 2011-55.000 prisoners and 190.000 probationers
 - England and Wales – 2013-83.000 prisoners and 224.823 probationers

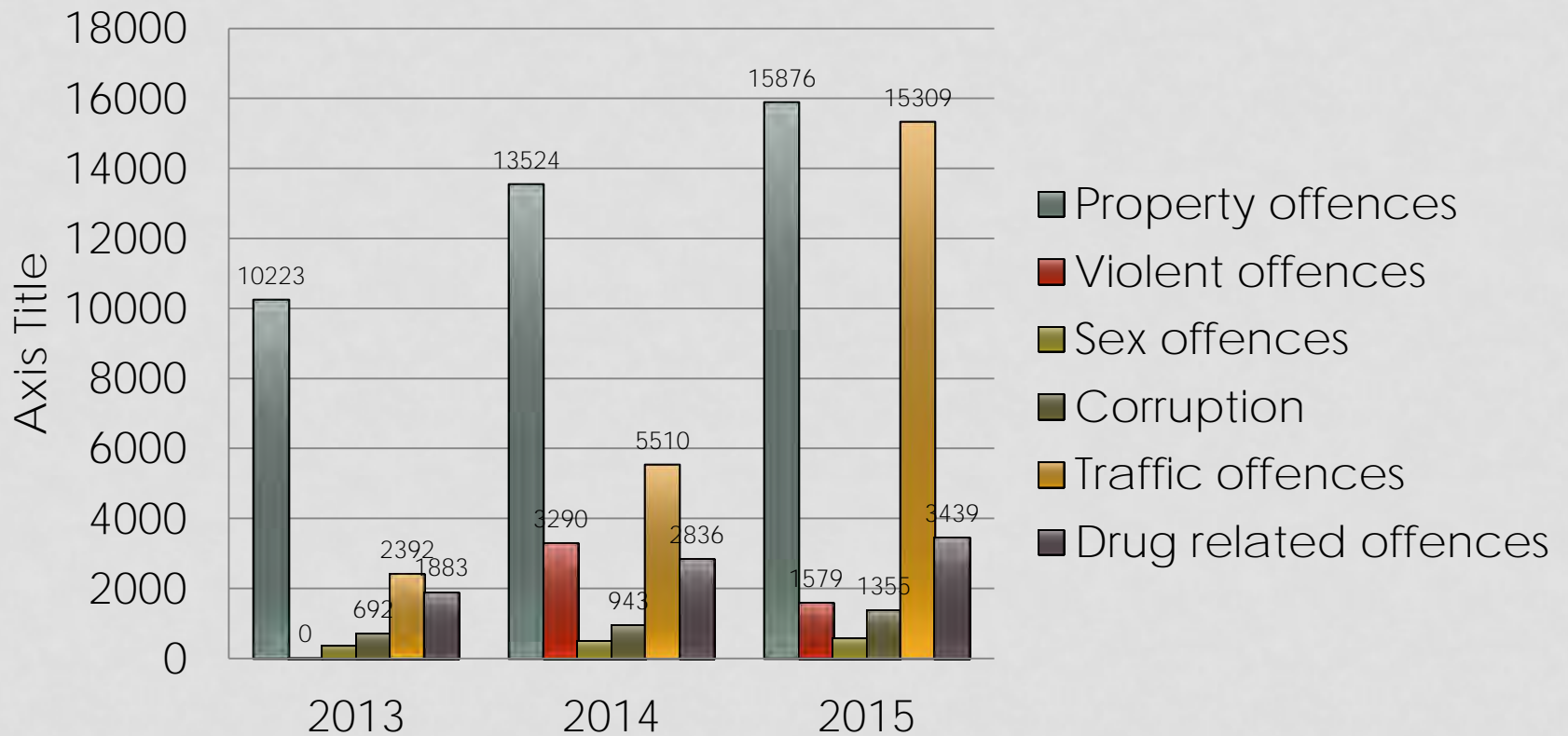
MASS SUPERVISION IN ROMANIA

- New Penal Code – 1st of February 2014



SOURCES OF MASS SUPERVISION

Chart Title



DISCUSSION. ROMANIA

- Decrease the prison population with 18% while increasing the probation population by 270%
- Probation seems to be '**net widening**' for traffic offences
- 380 probation counselors (182 new posts from 2017)
- About 157 probationers / 1 probation counselor
- Probation staff – an elastic resource but is a PC effective working with more than 40-50 cases at once? Time for processing FD requests, informing probationers?

Thanks!

idurnescu@gmail.com



Co-funded by the Justice
Programme of the European Union
2014-2020

ALTERNATIVE SANCTIONS FOR DRUG OFFENDERS AND THOSE WITH MENTAL HEALTH ISSUES IN CATALONIA

NÚRIA BAQUÉ & MARINA LISA
NOVEMBER 24th, 2017 BUCHAREST



Generalitat de Catalunya
Departament de Justícia



LEGAL FRAMEWORK

- Criminal Code (1995)
- Royale Decree No. 840/2011 of June 17, which establishes how to serve sentences of: unpaid work, permanent location in prison, certain security measures and the suspension of the prison sentences with obligations.
- Multidisciplinary professionals (psychologists, criminologists, social workers...) as a probation officers, territorially organized.

Community Sanctions
and Measures

Department of
Justice
transferred the
power to

Sub-directorate General of Community Repair
and Community Sanctions (Subdirecció
General de Reparació i Execució Penal a la
Comunitat)

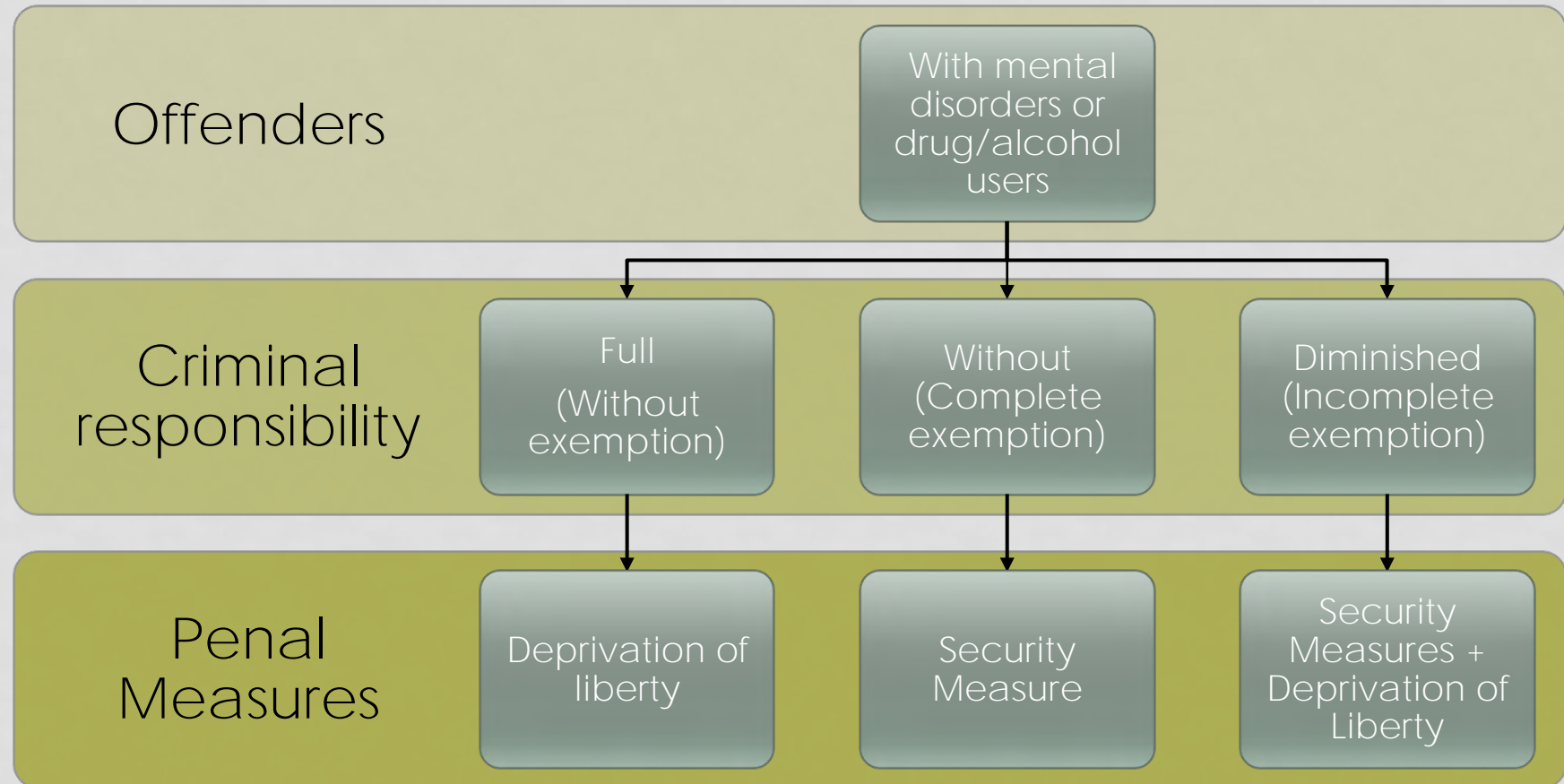
Framework agreement, after a
public tender

APIP

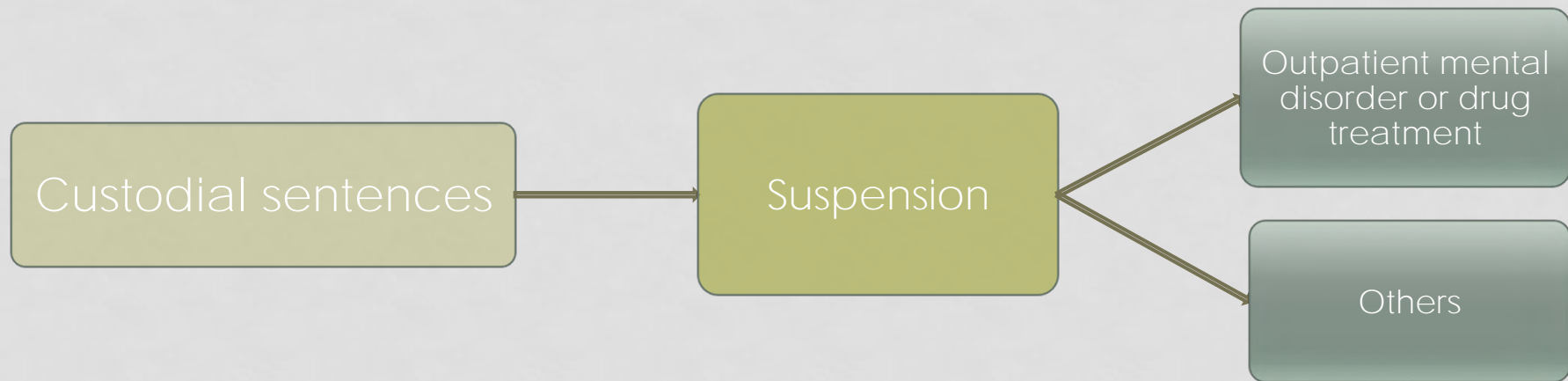
Intress

IReS

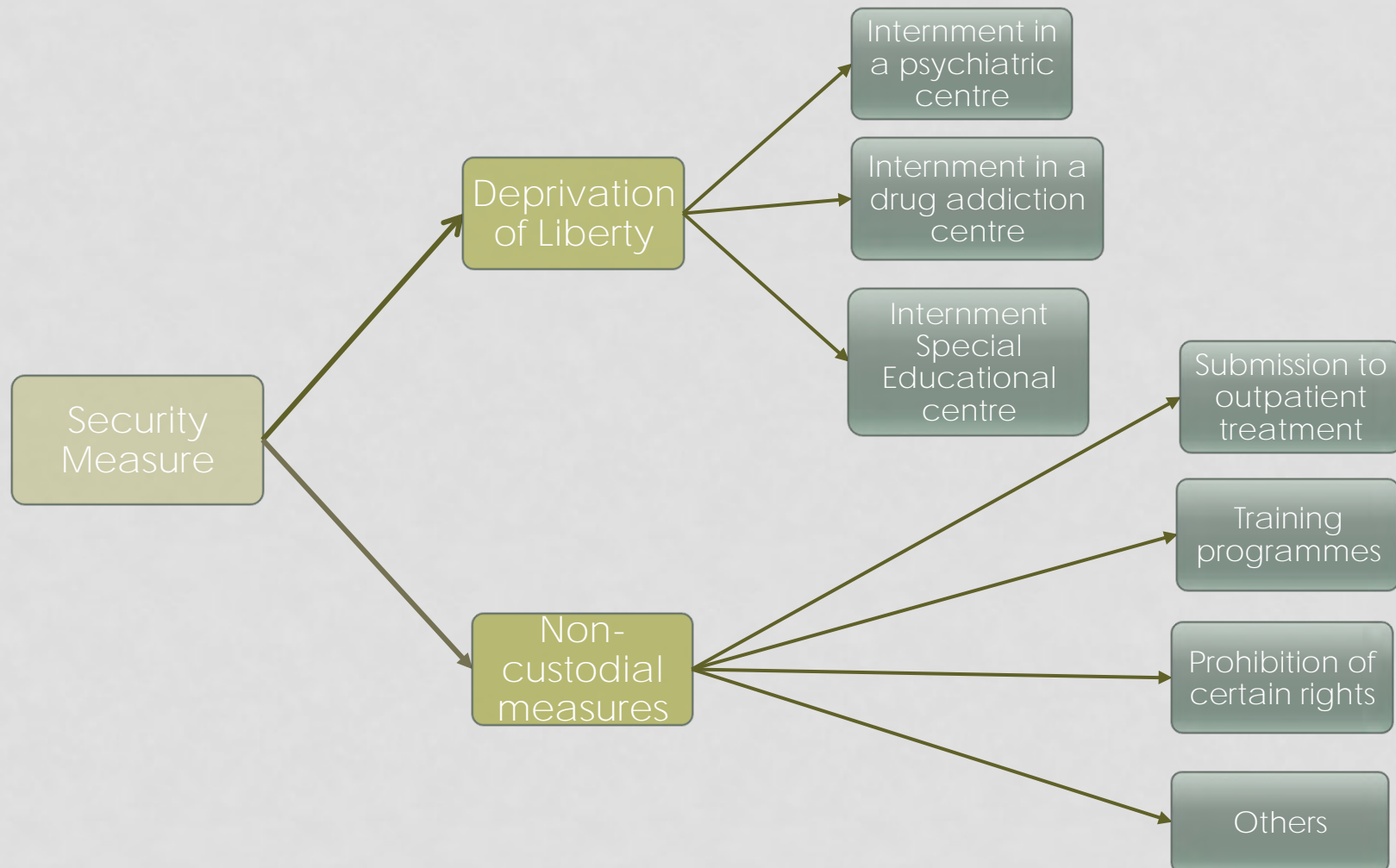
CRIMINAL RESPONSIBILITY & PENAL MEASURES FOR MENTAL DISORDERS/DRUG USER



SANCTIONS IN THE COMMUNITY



METHOD OF COMPLIANCE



COMPLIANCE CENTRES

NETWORK OF DRUG DEPENDENCY

- Therapeutic Communities
- Centers for Monitoring and Drug Addiction (CASD)
 - Legal residences
 - Hospital detox units
 - Therapeutic apartments

INTELLECTUAL DISABILITIES NETWORK

- Directorate General of Public Protection.
Department of Labour, Welfare and Families
- Intellectual Disability Care Centers (CAD)
 - Residential
 - Legal residences
 - Supervised apartments
 - Occupational workshops
- Hospitalization Unit For People with a Diminished Intellectual Capacity

MENTAL HEALTH NETWORK

- Psychiatric Hospitals
- Mental Health Centers (MHCs)
 - Legal residences
- Specific units of general hospitals
- Therapeutic apartments

LABOUR SOCIAL NETWORK

- CIRE, public company,
depending of the Justice
Department

PRISON

- Psychiatric Unit

THE ROLE OF THE PROBATION OFFICER

- The probation officer supervises the progress of the offender's treatment while offering him or her socio-educational support aimed to a social integration, ensuring the fulfillment of the conditions established by the sentence.

Tasks

1. INITIAL PHASE

- Reviewing the Judicial documentation + Forensic report
- Interviewing with the offender
- Searching of an appropriate resource and/or fixing coordination with the professionals of the chosen center.
- Reporting to the court of the proposed individual plan, in order to be approved by the judge.

THE ROLE OF THE PROBATION OFFICER

2. FOLLOW UP STAGE

- Carrying on interviews with the offender (usually monthly).
- Establishing professional coordination with the public compliance centre
- Reporting to the court (usually quarterly) on:
 - ❑ the current situation of the offender
 - ❑ The treatment's progress and the assessment report of the professional of the compliance centre
 - ❑ Breaches
- And proposing:
 - ❑ Modifications of the initial work plan content and/ or about the center of compliance attending

3. FINAL STAGE

- Carrying on final interview with the offender.
- Producing final report (offender's progress and current situation)

STUDY CASE I

- Mr. García (40 years old)
- Robbery using force + Drug dependence =
- Penalty: 11 month of deprivation of liberty
- Suspended sentence → submission to a drug addiction treatment for 3 years

STUDY CASE II

- Ms. Pérez (25 years old)
- Homicide + Mental health issue (paranoid schizophrenia) = Incomplete exemption, diminished criminal responsibility
- 8 years of deprivation of liberty + 8 years of security measure of internment in a a psychiatric center



Community Coordination to prevent crime

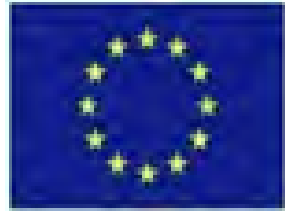
Núria Baqué
nbaque@gencat.cat
www.fundacioires.org/es

Marina Lisa
marina_lisa_ext@gencat.cat
www.intress.org



Generalitat de Catalunya
Departament de Justícia





**Co-funded by the Justice
Programme of the European Union 2014-2020**

Electronic Monitoring in the Netherlands

Koos Bergwerff & Eric Staal
Bukarest, Februari 23th 2017



Three core tasks Probation

- Advice
 - Early intervention
 - Probation recommendation
- Supervision
 - Probation supervision
 - Behavioural training
- Community service
 - External project site
 - Group project



Constant factor in criminal justice chain

early intervention visit

recommendation to the
magistrate or court chamber

ASAP

probation recommendation

suspended sentence

police detention/
remanded into custody

court session/
ruling

sentence

after (prison) sentence

supervision

community service

Penitentiary Programme (PP) /
Electronic Control (EC) - end of detention

follow up /
administrative supervision

supervision during
probationary supervision





EM in criminal proceedings

- Suspension of pre trial custody
- (Partly) suspended sentence under supervision
- Prison leave
- As part of execution of prison sentence (penitentiary program)
- Conditional release or conviction
- Conditional termination TBS with special conditions

- Special conditions in legislation**
 - location commandment (place offender must be at specific times)
 - Location prohibition (place(s) offender is not allowed to come)

- Special Groups**
 - Minors
 - Jihadism/Terrorism
 - Temporary law administrative measure against terrorism (from 1th March 2017)

What is EM?



- EM is a tool to strengthening the control and supervision of the special conditions imposed supervised.
- The strength lies in the combination of supervision and control.



No EM without supervision!



When EM is imposed, there is always supervision with special condition(s) inclusion and/or exclusion zone.

Goal EM:

- Risk management;
- No new victims;
- Protecting victims;
- Support behavior change.



EM Hardware

Elektronische controlemiddelen

1) RFID



2) GPS





Categories of breaches

GPS

- inclusion zone (timeschedule)
- exclusion zone to protect victim (hybrid)
- exclusion zone without victim protection (retrospective)
- sabotage/technical breaches

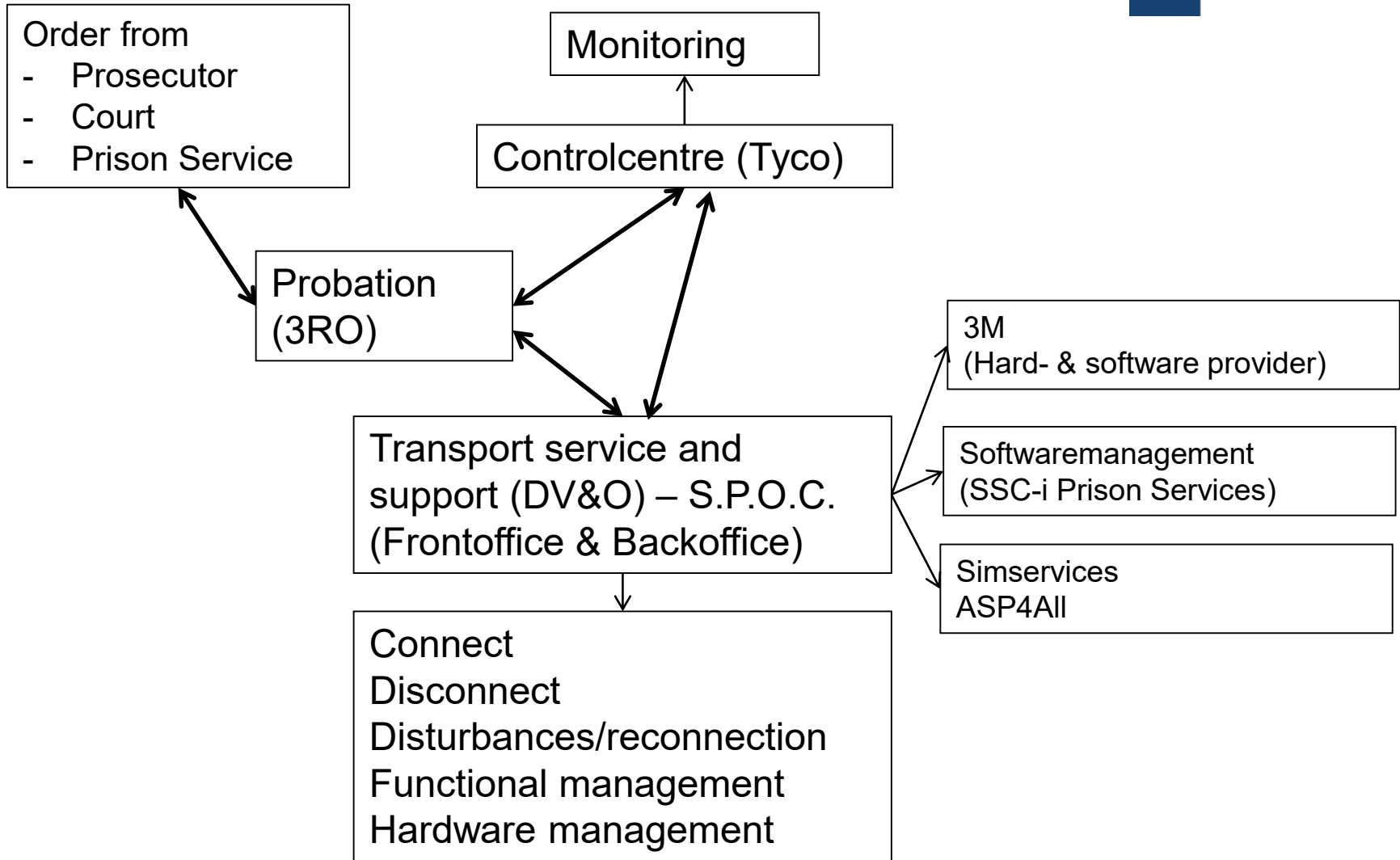
RFId

- inclusion zone (timeschedule)
- sabotage/technical breaches

- Minors
- Jihadism/Terrorism



EM in the Netherlands – chain partners





Follow-up protocol

- RFID
- GPS
- Minors
- Jihadism/Terrorism

- Level 2
- Level 3 (victim protection)

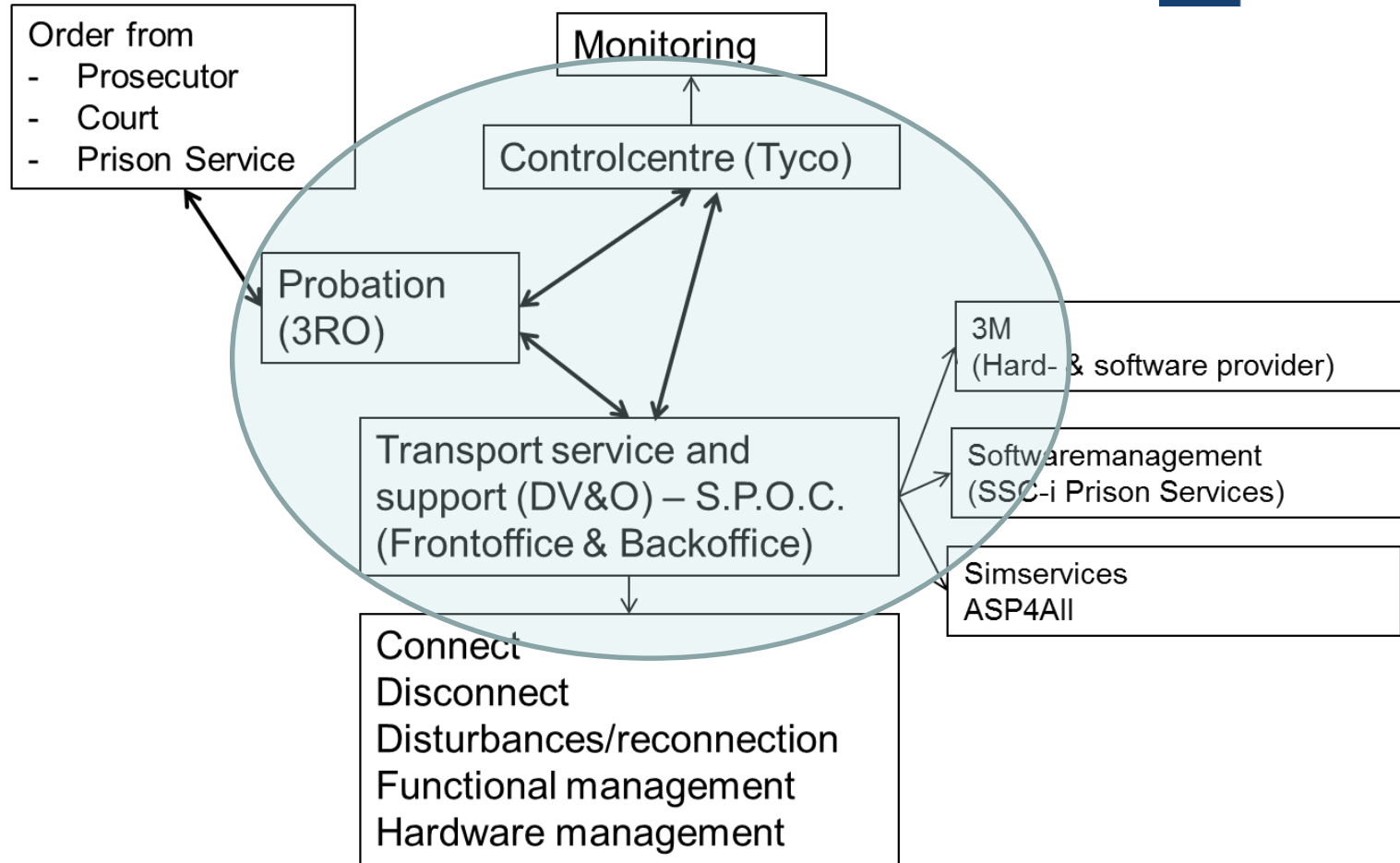
EM process



Melding	Uitleg	Directe actie opzeggingskamer	GSM RO	ZTRACK	YTRACK	Inbox RO & Tracer voor Toezichhouder	Actie Regelkamer Tyco	Actie DV&O	Minderjarigen (16-17)	Opvang / Statusinfo	Superviseur afdeling van RO
Beweging zonder GPS (maar wel LBS)	Person in beweging zonder GPS contact	Ja, indien herstelt langer dan 30 min. En na 21.00 uur	Nee, tenzij geen herstelt	Ja	Ja	Nee, alleen bij actie	Regelkamer belt deelnemer als er na 30 minuten nog geen GPS is met het verzoek de verbinding te herstellen. Bij weigering of geen contact wordt contact opgenomen met RO.	Actie DV&O	geen actie	Deze melding is tijdig. Zodra GPS hersteld kan LBS uit. Bijlt dit lang herstel, dan is een check te adviseren.	Check of deelnemer inrichting verboden gebied beweegt of in overtoering is i.a.v. schema.
Geen LBS (en geen GPS)	Person is niet meer in beeld, maar dit is een statische situatie.	geen	Nee	Ja	Ja	Nee	Nee	Nee	Nee	Deze melding is tijdig. Zodra GPS hersteld kan LBS uit. Bijlt dit lang herstel, dan doet de Reclasseringswerker dit bij zijn dagelijkse check.	Nee
Wachtruimte/verboden gebied	sabotage van GPS unit	Ja	Nee	Ja	Ja	Ja	Regelkamer meldt dit aan DV&O die controle bij deelnemer gaan doen.	DV&O stemt met deelnemer af om binnen 24 uur lang te gaan en vervangt Tracker. Terugkoppeling aan RO binnen 1 werkdag na het bezoek. Bij geen contact of Toezichhouder (niet beschikbaar). Let op: geen telefonisch contact en bezoek tussen 22.00-08.00 uur. Terugkoppeling via inbox RO.	Regelkamer meldt dit aan DV&O die controle bij deelnemer gaan doen. DV&O stemt met deelnemer af om lang te gaan en vervangt Tracker. Terugkoppeling aan RO binnen 1 werkdag na het bezoek. Bij geen contact of Toezichhouder (niet beschikbaar). Let op: geen telefonisch contact en bezoek tussen 22.00-08.00 uur. Terugkoppeling via inbox RO.	DV&O maakt afspraak met cliënt voor controle. (Bij jeugd gebeurt dit binnen 24 uur nadat contact is geweest met de deelnemer). Als na analyse blijkt dat er sprake is van opzet, RO informeren.	Registratie van sabotage en evt. contact richting opzeggingskamer. Bij opzet is advies stopzetting.
Batterij tracker laag	batterij tracker (handheld) is laag of (piece is onvoldoende opgeladen, unit oopgeeft (dit is de laatste melding voor u)ur)	Ja	Nee, tenzij geen herstelt binnen 30 minuten	Ja	Ja	Ja	Regelkamer belt direct deelnemer en geeft opdracht tot opladen (Bij 2piece de tracker in home-unit plaatsen). Wanneer dit na 30 minuten niet is gebeurd, neemt Regelkamer contact op met RO.	Na opdracht van RO afstemmen om eventueel opzet te gaan checken/vervangen.	Regelkamer belt met opdracht tot opladen. Let op: niet belten tussen 22.00 en 08.00 uur. Informatie via inbox RO.	Regelkamer belt en geeft opdracht tot onmiddellijk opladen, uiterlijk binnen 30 minuten.	Wanneer opladen niet wordt uitgevoerd (weigering of geen contact), is dit overtoering van de voorwaarden. Wordt dit wel uitgevoerd, maar is opzeggings-unit defect, dan contact opnemen met DV&O voor opzetting.
Overtoering Toegestaan zone - Huis (i.c.m. Overtoering Thuisgebied)	niet aanwezig in geboden gebied	Ja, indien herstel langer dan 30 min.	Nee, tenzij dit langer bestaat dan 2 uur	Ja	Ja	Ja	Wanneer deelnemer langer dan 30 minuten niet aanwezig is in geboden gebied, belt Regelkamer deelnemer met verzoek ASAP naar het geboden gebied (thuis) te bewegen. Bij weigering/geen herstel binnen 120 minuten opschalen naar RO.	Regelkamer stuurt bericht naar toezichhouder/inbox RO als na 120 minuten niet is hersteld.	Regelkamer stuurt bericht naar toezichhouder/inbox RO als na 120 minuten niet is hersteld.	Bespreken in kader van naleving, evt. bespreken met/melden aan opzeggingskamer.	Bespreken in kader van naleving, evt. bespreken met/melden aan opzeggingskamer. RO informeert opdrachtgever bij afwezigheid > 2 uur. Alleen bij PP gebeurt dit ook buiten kantoor tijd!
band sabotage	sabotage aan de enkelband	Ja	Nee	Ja	Ja	Ja	Regelkamer informeert DV&O.	DV&O stemt met deelnemer af om lang te gaan en vervangt GPS-band. Bij bijzondere omstandigheden of lange tijd van weigering aan RO binnen 1 werkdag na het bezoek. Bij geen contact of weigering melding bij RO.	Regelkamer meldt dit aan DV&O die controle bij deelnemer gaan doen. DV&O stemt met deelnemer af om lang te gaan en vervangt Tracker. Terugkoppeling aan RO binnen 1 werkdag na het bezoek. Bij geen contact of weigering melding bij RO.	Regelkamer informeert DV&O, die vervolgens de deelnemer belt voor afspraak herstel. DV&O kan evt. opschalen naar RO bij geen contact of weigering. DV&O informeert RO binnen 1 werkdag na het bezoek over situatieve toezichtbeelden en wanneer er vermoeden van opzet was.	Bespreken in kader van naleving, evt. bespreken met/melden aan opzeggingskamer.
Aankomst Verboden gebied	Overtoering verboden gebied	Ja	Nee, tenzij deelnemer weigert gebied niet verlaten	Ja	Ja	Ja	Regelkamer belt en verzoekt de deelnemer het verboden gebied te verlaten. Indien deelnemer weigert, neemt Regelkamer contact op met RO.	Regelkamer stuurt bericht naar toezichhouder/inbox RO	Regelkamer stuurt bericht naar toezichhouder/inbox RO	Bij niveau 2 is verboden gebied zonder directe melding aan politie mogelijk. Regelkamer belt direct de deelnemer en geeft opdracht direct het verboden gebied te verlaten.	RO bespreekt melding in het kader van naleving en informeert evt. de opdrachtgever.
Zonder batterij laag	RFID-sender van de 2piece (enkelband) batterij laag, laatste melding voordat deze uitvalt	Ja	Nee	Ja	Nee	Ja	Regelkamer informeert DV&O.	DV&O stemt met deelnemer af om binnen 8 uur lang te gaan en vervangt GPS-band (2piece). Bij geen contact of weigering melding bij RO.	In principe niet van toepassing. Jeugdige geen Ztrack	Bij weigering/geen contact met cliënt opschalen naar RO.	Alleen bij weigering van of geen contact met cliënt wordt RO ingeschakeld. RO bespreekt risico (uurt draagt). RO bespreekt melding in het kader van naleving en informeert evt. de opdrachtgever.
Uitwaarschuwing sabotage	contact enkelband en lichaam onderbroken	Nee, tenzij herhaaldelijke meldingen	Nee	Ja	Nee	Ja	Indien herhaaldelijke meldingen (binnen 24 uur) melden bij RO tijdens kantooruren (Bij het Achenwacht batterij)	Na opdracht van RO afstemmen om eventueel band te gaan checken/vervangen.	Regelkamer stuurt bericht naar toezichhouder/inbox RO.	Regelkamer informeert RO. Deze bepaalt eventuele opzet DV&O.	Analyse RO, opzet in combinatie met handsabotage (Bij herhaling: checken of band te los zit, dan een afspraak maken met DV&O)
Enkelband buiten bereik	onderlinge afstand tussen enkelband en GPS unit te groot (niet bij track)	Ja, indien herstel langer dan 30 min.	Ja, indien herstel langer dan 30 min.	Ja	Nee	Ja	Indien dit na 30 minuten niet is hersteld, deelnemer bellen en verzoeken GPS-band (Ztrack) en enkelband samen te dragen. Bij weigering, geen contact of herstel na 30 min. bellen.	Regelkamer stuurt bericht naar toezichhouder/inbox RO.	In principe niet van toepassing. Jeugdige geen Ztrack	Regelkamer belt deelnemer op mobiele nummer met opdracht tot direct herstel. Opschalen tijdens kantooruren via GSM RO. Buiten kantooruren via de mail naar RO bij geen contact of weigering.	Bespreken of sprake is van weigering of defect (niet in oering met deelnemer) en dit melden met melding in RO informeert evt. opdrachtgever.
geen festijnal	geen contact met het basissation via het GSM-netwerk	Ja, indien herstel langer dan 30 min.	Ja	Ja	Ja	Ja, indien actie	Regelkamer belt indien geen herstel na 30 minuten RO.	EM, na opdracht van RO de rapportuur vervangen.	Regelkamer belt overleg met EC-coördinator. Buiten kantooruren wordt dit per mail (E-coördinator en medelid E-specialist) gemeld. EC-coördinator stemt met deelnemer en DV&O af om lang te gaan voor vervangen van opzeggings-unit. Let op: geen telefonisch contact en bezoek tussen 22.00-08.00 uur.	Regelkamer belt RO. Deze analyseert de brief. thuis is (bent met home-unit), anders bellen waar hij is of van die klopt met laatste bekende positie.	RO evt. overleg met UM en Regelkamer/DV&O voor nodig (bezoek, vervangen etc.) let op ritico!
Crade gepoed	De behuizing van het basissation is geopend	Ja	Nee	Ja	Ja	Ja	Regelkamer meldt dit direct aan DV&O.	DV&O neemt contact op met deelnemer en DV&O gaat langs voor controle/vervang. Bij uval direct, anders binnen 24 uur. Terugkoppeling van DV&O naar RO. Bij weigering of geen contact, direct contact met RO.	In principe niet van toepassing. Jeugdige geen Ztrack	Regelkamer informeert DV&O, die afspraak maakt voor controle, als na analyse blijkt dat er sprake is van opzet, RO informeren.	DV&O schalt op naar RO, bij weigering of geen contact. RO informeert evt. opdrachtgever. Advies is stopzetting.
Crade bewegen	Het basissation is bewegen / verplaatst	Nee	Nee	Ja	Ja	Ja	Geen actie.	EM, na opdracht van RO de rapportuur controleren.	Geen actie	Alleen melding per mail vanuit Regelkamer. DV&O evt. na opdracht van RO.	RO bespreekt dit in kader van naleving. Let op in combinatie met melding nr. 14!
Basissation adapter ontkoppeld	De adapter van het basissation is ontkoppeld en heeft dus geen spanning	Ja	Bij geen contact met of weigering: Ja	Ja	Ja	Ja	Bij geen contact met of weigering: Ja	Regelkamer belt direct deelnemer met verzoek tot herstel. Bij geen contact of weigering contact opnemen met RO.	Regelkamer belt met deelnemer met verzoek tot herstel. Let op: geen telefonisch contact en bezoek tussen 22.00-08.00 uur. Terugkoppeling via inbox RO.	Regelkamer belt deelnemer met de opdracht tot herstel. Bij weigering of geen contact neemt zij contact op met RO.	Beoordeelt bewuste actie of defect opzeggings-unit. Bij geen contact of weigering evt. opdrachtgever informeren.
Batterij basissation laag	De adapter van het basissation/home-unit is ontkoppeld en niet meer aangesloten of mogelijk defect	Nee, tenzij geen opvang heeft gehad.	Nee	Ja	Ja	Ja	Bij geen contact met of weigering: Ja	Regelkamer belt direct deelnemer met verzoek tot herstel. Tenzij melding is geen opvang heeft gehad, dan bij geen contact of weigering contact opnemen met RO.	Regelkamer belt met deelnemer met verzoek tot herstel. Let op: geen telefonisch contact en bezoek tussen 22.00-08.00 uur. Terugkoppeling via h.g.p. Ja inbox RO.	Regelkamer heeft, als het goed is al gehandeld op de melding Basissation adapter ontkoppeld. Dan alleen mail naar RO.	DI is de laatste melding voordat basissation uitvalt. Dit actie is gevaarlijk zie ook melding nr. 14!
Sabotage huis unit (Combinatie melding 13 en 14)	De adapter van het basissation is ontkoppeld en tevens is het basissation bewegen/verplaatst.	Ja	Nee, tenzij met of weigering van deelnemer	Ja	Ja	Ja	Regelkamer belt direct deelnemer met verzoek tot herstel. Bij geen contact of weigering contact opnemen met RO.	In opdracht van RO (n.a.v. telefonische melding of melding per mail) controle positie basissation en indien nodig herstellen. Terugkoppeling RO.	Regelkamer belt met deelnemer met verzoek tot herstel. Let op: geen telefonisch contact en bezoek tussen 22.00-08.00 uur. Terugkoppeling via h.g.p. Ja inbox RO.	Regelkamer belt deelnemer met de opdracht tot herstel. Bij weigering of geen contact neemt zij contact op met RO.	RO geeft DV&O opdracht tot controle positie deelnemer met verzoek tot herstel. Bij geen contact of weigering contact opnemen met RO.
ZPiece in crade plaatsen	De ZTRACK moet in het basissation worden geplaatst omdat de deelnemer volgens het schema thuis moet zijn	Ja	Nee	Ja	Nee	Bij geen contact of weigering: Ja	Regelkamer belt direct met deelnemer met opdracht Ztrack in crade te plaatsen.	EM, na opdracht van RO de rapportuur controleren.	Geen actie	Alleen melding per mail vanuit Regelkamer. DV&O evt. na opdracht van RO.	Regelkamer stuurt bericht naar RO bij geen contact of weigering. RO informeert evt. opdrachtgever (bewuste sabotage is overtoering voorwaarden)
Deelnemer niet in bereik van huis unit	De onderlinge afstand tussen ZTRACK en het basissation is te groot, de deelnemer is dus volgens het systeem niet thuis.	Ja, als dit langer dan 30 minuten duurt.	Nee, tenzij dit langer bestaat dan 2 uur	Nee	Ja	Bij geen contact of weigering: Ja	Regelkamer belt indien geen herstel na 30 minuten deelnemer met opdracht zich binnen het bereik van het basissation te bewegen. Bestaat melding langer dan 120 minuten, wordt contact opgenomen met RO.	Regelkamer stuurt bericht naar RO bij geen contact of weigering. Jeugdige geen Ztrack	Regelkamer belt met deelnemer met verzoek tot herstel. Let op: geen telefonisch contact en bezoek tussen 22.00-08.00 uur. Terugkoppeling via h.g.p. Ja inbox RO.	Regelkamer belt op 30 minuten de deelnemer met opdracht zich binnen het bereik van het basissation te bewegen, is er na 120 minuten geen herstel, dan wordt RO gebeld.	Als melding meer dan 120 minuten bestaat wordt RO ingeschakeld. Zoek contact met deelnemer. Meldt dit evt. bij opdrachtgever (bewuste sabotage is overtoering voorwaarden)

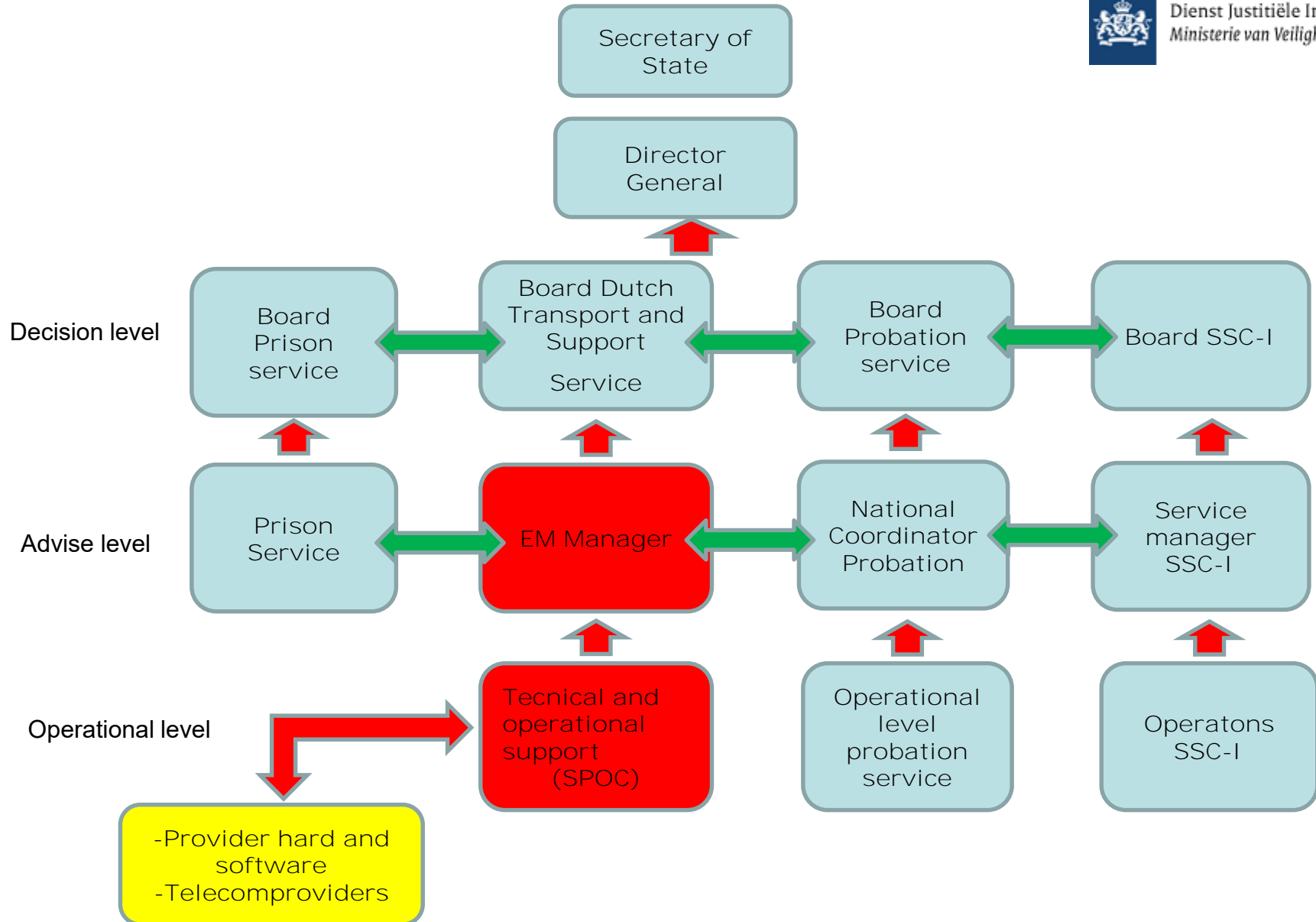


Follow-up process





Business continuity plan





Role probation officer in breaches

Different agreements in the chain:

- Prison leave (retrospectiv – except Sabotage/Failure)
- Sanctionframe Penitentiary program
- Professional (customised) approach
 - Supervisor responds to breaches detected
 - Information from the software is used in supervision

- Report/Advise (direct-retrospectiv)

- Purchaser decides
 - Public Prosecution
 - Court
 - Prison Services (penitentiary program & leave)



What do we see?

3M Monitor Deelnemers Rapporten EAltena, Log Uit Vcomm Dcc 10:53

Ressort: Utrecht L2 Medewerker: Terpstra Harry 2TRACK nieuw Laatste upload 13-10-2014 10:26:39

Waalstraat 91, Utrecht Netherlands 3522 SV, (System Time Zone) Thuis: 46-7190004399244

Details Configuratie **Locatie** Schema Huidige status Brijchrift kaart >>

Locatie

Volgen Gebieden

Online Geschiedenis

Bekijken

Recent:

12 uur

Van Tot

03-10-2014 09:00 05-10-2014 18:00

Laatste punt 5-10-2014 18:00:00

Filter spoor

Interval tussen punten:

Datum & Tijd 0 Seconden

Afstand 0 Meters

Alleen overtredingen tonen

LBS gebied tonen

Tonen

Ve..	Van	Tot
#5	3-10-2014 14...	6-10-2014 13...
#4	30-9-2014 16...	3-10-2014 14...

Adres

Kaart Kaart met labels Satelliet

RN verboden Leersum

5 3 7



3M
Monitor
Deelnemers
Rapporten
Ealtena, Log uit
Vcomm Dcc 10:38

Waalstraat 91, Utrecht Netherlands 3522 SV, (System Time Zone)
Resort: Utrecht L2
Medewerker: Terpstra Harry
2TRACK nieuw
Laatste upload 13-10-2014 10:26:39

Details
Configuratie
Locatie
Schema
Huidige status
Bischrift kaart >>

Locatie

Volgen
 Gebieden

Online
 Geschiedenis

Bekijken

Recent:

12 uur

Van Tot

12-10-2014 10:37 13-10-2014 10:37

Laatste punt 13-10-2014 10:26:30

Filter spoor

Interval tussen punten:

Datum & Tijd 0 Seconden

Afstand 0 Meters

Alleen overtredingen tonen

LBS gebied tonen

Tonen

Ve.	Van	Tot
#7	6-10-2014 13...	

Adres .

Kaart
 Kaart met labels
 Satelliet

Thuis Exodus

5
3
7



Data for police investigation?

- Demand supply data by prosecutor
(Article 126 nd of criminal law)
- Frameworkletter Prosecution
(8 years offences and community-impact!)

Added value EM



- Efficient and effective monitoring of compliance with restricting liberty conditions
- Punitiv character
- Provides structure
- More effectiv by combining guidance and control
- Prevents damage from detention (conservation of work, **house/family, possibility to treatment and so on...**)
- Cheaper than imprisonment



Numbers



- # Notifications violations Monitoringcentre

2015	Weekly	Monthly	Annually
Number of notifications	Aprox. 300	1200	14.400

- # Assignments/actions breaches DV&O

	2015
Number of disturbances (including sabotage, moved home-unit and such)	1340

- # Bracelets

	2013	2014	2015
Number conducted EM-connections	1028	1250	2220
Number daily monitored EM-connections	150	250	500

- # Negativ returns:

	2013	2014	2015
Number ended prematurely without EM	2959	3462	3518
Number ended prematurely with EM	191	185	266
	2013	2014	2015
Percentage ended prematurely without EM	20,9%	22,9%	22,6%
Percentage ended prematurely with EM	14,2%	11,8%	12,9%

